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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH J. GIRAUDO, RAYMOND A.
GRINSELL, KEVIN B. CULLINANE,
JAMES F. APPENRODT, and
ABRAHAM S. FARAG,

Defendants.

CASE NO. CR 14-00534 CRB

**DECLARATION OF ASHLEY M. BAUER IN
SUPPORT OF DEFENDANTS' NOTICE OF
MOTION AND MOTION TO SUPPRESS
EVIDENCE; MEMORANDUM OF POINTS
AND AUTHORITIES**

The Honorable Charles R. Breyer
Courtroom 6, 17th Floor
Date: January 21, 2016
Time: 10:00 am

1 I, Ashley M. Bauer, declare as follows:

2 1. I am a partner at the law firm of Latham & Watkins, LLP, licensed to practice law
3 in the State of California, admitted to practice before this Court, and counsel for Defendant
4 Abraham S. Farag in this matter.

5 2. Pursuant to Criminal Local Rule 47-2(b), I submit this declaration in support of
6 the accompanying Defendants' Notice of Motion and Motion to Suppress Evidence;
7 Memorandum of Points and Authorities.

8 3. I have personal knowledge of the matters set forth herein, except those matters
9 stated upon information and belief, which I believe to be true. If called to testify as a witness,
10 I would testify competently under oath.

11 4. Attached as Exhibit A is a true and correct copy of a July 2, 2015 email from
12 counsel for the Government to defense counsel, stating that the Government "did not obtain any
13 electronic intercept orders from the court, nor did it submit to the court any applications for
14 wiretap or other electronic surveillance authorizations" in connection with the investigation of
15 this case.

16 5. Attached as Exhibit B is a true and correct copy of a September 3, 2015 letter
17 from counsel for the Government to defense counsel, disclosing the specific locations of
18 stationary audio and video recording devices at the 401 Marshall Street entrance to the San
19 Mateo County courthouse.

20 6. Attached as Exhibit C is a diagram of the 401 Marshall Street entrance to the San
21 Mateo County courthouse. The measurements on the diagram are true and correct upon
22 information and belief.

23 7. Attached as Exhibit D (filed under seal) is a true and correct copy of a
24 spreadsheet titled "NDRE Voluntary Disclosure: San Mateo Stationary A/V," which I received
25 from counsel for the Government on September 17, 2015.

26 8. As indicated on Exhibit D, the Government has identified 362 audio and video
27 files as being recorded by electronic listening devices placed at the San Mateo County
28 courthouse. On information and belief, these files total over 200 hours of recordings.

1 9. As indicated by the “BEG TIME” and “END TIME” on Exhibit D, the recordings
2 from listening devices at the San Mateo County courthouse often began more than an hour
3 before the auctions started and generally ran until after the auctions concluded, in some cases for
4 up to five hours continuously.

5 10. Attached as Exhibit E is a true and correct copy of the Declaration of Roahn
6 Wynar, a Special Agent of the Federal Bureau of Investigation, which I received from counsel
7 for the Government on October 1, 2015.

8 11. Attached as Exhibit F (filed under seal) is a true and correct copy of the video and
9 audio recording with file number 1D045.002.avi, which shows several individuals talking into
10 their cellphones away from the auction area. Other individuals can be heard (but not always
11 seen) speaking on cellphones.

12 12. Attached as Exhibit G (filed under seal) is a true and correct copy of the audio
13 recording with file number 1D564.001_part1.wav, which captures both ends of a cell phone
14 conversation at approximately minute 27:20.

15 13. Attached as Exhibit H (filed under seal) is a true and correct copy of a
16 surveillance photograph bearing Bates number NDRE-SM100125-W-DSC-0256, which shows
17 Defendant Raymond Grinsell talking to another individual next to the sprinkler box in which the
18 Government hid an eavesdropping device.

19 14. Attached as Exhibit I (filed under seal) is a true and correct copy of a still from
20 the video and audio recording with file number 1D566.001.avi at 19:55, which shows alleged co-
21 conspirator Dan Rosenbledt speaking privately with an unknown woman near the sprinkler box
22 in which the Government hid an eavesdropping device.

23 15. Attached as Exhibit J (filed under seal) is a true and correct copy of a still from
24 the video and audio recording with file number 1D034.007.avi at 23:34, which shows alleged co-
25 conspirator Dan Rosenbledt sitting in a chair adjacent to the sprinkler box in which the
26 Government hid an eavesdropping device, while speaking on his cellphone.

27 16. Attached as Exhibit K (filed under seal) is a true and correct copy of a still from
28 the video and audio recording with file number 1D085.001.avi at 3:07, which shows alleged co-

1 conspirator Dan Rosenbledt standing next to the chair adjacent to the sprinkler box in which the
2 Government hid an eavesdropping device, while speaking on his cellphone.

3 17. Attached as Exhibit L (filed under seal) is a true and correct copy of a still from
4 the video and audio recording with file number 1D230.003.avi at 17:57, which shows alleged co-
5 conspirator Dan Rosenbledt speaking privately with an unknown woman adjacent to the
6 sprinkler box in which the Government hid an eavesdropping device.

7 18. Attached as Exhibit M (filed under seal) is a true and correct copy of a still from
8 the video and audio recording with file number 1D453.001.av at 13:49, which shows alleged co-
9 conspirator Dan Rosenbledt and an unknown man, having walked away from others to have a
10 private discussion, speaking in front of the courthouse entrance.

11 19. Attached as Exhibit N (filed under seal) is a true and correct copy of an FBI
12 report bearing Bates number NDRE-FBI-FISUR-000056. The report states that agents observed
13 Defendant Kevin Cullinane and alleged co-conspirator Craig Rogers abruptly separate
14 themselves from the auction crowd, engage in a brief discussion, and then return to the auction
15 crowd on at least four occasions. The report also states that agents observed alleged co-
16 conspirator Rosenbledt speaking into Defendant Cullinane's ear.

17 20. Attached as Exhibits O and P (filed under seal) are true and correct copies of the
18 recordings with file numbers 1D098.002_part2.wav and 1D098.002_part3.wav, respectively. At
19 approximately minute 52 of file 1D098.002_part2.wav and continuing onto
20 1D098.002_part3.wav, the recordings capture alleged co-conspirator Dan Rosenbledt and
21 Defendant Cullinane discussing private matters such as criticisms of business partners, opinions
22 on attorneys with whom the speakers had had interactions during the course of business, whether
23 a particular business partner should be allowed to continue with the group, and issues related to
24 funding certain purchases. The recordings indicate that while Rosenbledt and Cullinane were
25 engaged in this conversation, a man approached them and requested directions to traffic court.
26 After providing directions, Rosenbledt and Cullinane resumed their discussion in a lower
27 volume, while the man's footsteps can be heard retreating from them. The conversation between
28 Rosenbledt and Cullinane lasts approximately 35 minutes.

