Randall Garteiser (Cal Bar # 231821)
SINGER & GARTEISER LLP
1766 Union Street
San Francisco, CA 94123
Telephone: (415) 568-0553
Facsimile: (415) 568-0560
Email: randall@sftrialattorneys.com

Jennifer Granick, Esq. (Cal Bar # 168423)
Marcia Hofmann, Esq. (Cal Bar # 250087)
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
San Francisco, CA 94110
Telephone: (415) 436-9333
Facsimile: (415) 436-9993
Email: jennifer@eff.org
marcia@eff.org

Attorneys for Defendant: Christian Taylor

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. CHRISTIAN TAYLOR, Defendant.	Case No.: SC070057 (NF388922A) DA Case No: INFO0405593 (felony) **REPLY IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE AND TO TRAVERSE AND TO QUASH SEARCH WARRANT** DATE: February 18, 2009 TIME: 10:00 a.m. PLACE: 2A

I. THERE WAS NO PROBABLE CAUSE TO ARREST MR. TAYLOR.

A prerequisite to an inventory search or search incident to arrest is that probable cause existed to make the arrest in the first place. Here, probable cause did not exist to arrest Mr. Taylor, such that the later searches of his iPhone and car were unconstitutional under the Fourth Amendment. Mr. Taylor provided the clerk his valid Arizona ID with his name on it, a copy of Hype Univercity Online's tax ID number, the company's articles of incorporation, and sent an email to the Sprint store from his business account. (Taylor Decl. ¶ 4; Ex. A.)

Regardless, the police arrested Mr. Taylor without any investigational questioning. One of the stated bases for probable cause was that Mr. Taylor was "providing false financial statements." (Garteiser Decl., Ex. B – Arrest Probable Cause Determination.) However, the documents Mr. Taylor had in his hands were actual (not fraudulent) financial statements for Hype Univercity. (Taylor Decl., ¶¶ 4,5, Ex. 2 at 4.) The validity of the arrest depends upon Mr. Taylor providing some false information to Sprint, but the documents he had with him to present to the Sprint clerk were accurate. Accordingly, no probable cause existed to arrest Mr. Taylor and evidence from the subsequent search of his iPhone and his car should be suppressed.

II. THE WARRANTLESS INVESTIGATORY SEARCH OF MR. TAYLOR'S CAR WAS UNCONSTITUTIONAL.

The prosecutor agrees Mr. Taylor has standing to challenge the search of his car. (Opposition at 6.) An inventory search is constitutionally unreasonable when used as a ruse to conduct an investigatory search. (*Colorado v. Bertine* (1986) 479 U.S. 367, 371-372; *People v. Steeley* (1989) 210 Cal.App.3d 887, 891-892.) The prosecutor relies on 'community caretaking function' to impound the car. The prosecutor ignores the rule of law set out in *People v. Williams*, which states whether impoundment is warranted under the community caretaking doctrine "'depends on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft.'" (*People v. Williams*, *supra*, 145 Cal.App.4th at 761.) Here, there was no hazard to other drivers as the car was properly parked in a strip mall shopping center. There was no evidence presented by the prosecutor that either

vandalism or theft were concerns of the arresting officer. The arrest occurred in the early afternoon. The prosecutor argues that the private parking lot is for customers of the Sprint PCS store and after Mr. Taylor was arrested he was no longer a customer. (Opposition at 6.) The prosecutor has not provided the Court with any law or evidence in support of his position. (*Id*. at 6-7.)

"[A]n inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." (*Florida v. Wells*, 495 U.S. 1, 4 (1990); *People v. Needham* (2000) 79 Cal.App.4th 260, 266.) Where there is no standardized criteria or established routine, an inventory search is "not sufficiently regulated to satisfy the Fourth Amendment." (*Florida v. Wells*, *supra*, 495 U.S. at 4; *People v. Williams* (1999) 20 Cal.4th 119, 126.) The prosecutor fails to explain the fact that the officer decided to have the vehicle towed only after Mr. Taylor refused to let the officer search his car without a warrant. This fact supports a finding that the impoundment was just a ruse to conduct an investigative search of the car.

Nor did officers have the car towed to the police impound yard. The car was available for pick up from the tow truck lot as soon as it got there. It was never delivered to any police impound facility for safekeeping. (Garteiser Decl., ¶9.) The prosecutor offers the explanation that the "Defendant had no companions to take possession of the car." However, the owner of the automobile (Taylor's girlfriend) was available and could have picked up the vehicle. She was readily reachable. An officer called Mr. Taylor's girlfriend and told her where to retrieve from the car after Mr. Taylor was transported from the Sprint store to the prisoner processing center. She could have picked the vehicle up from the strip mall parking lot and not had to pay over $360 to a private towing company to get her car back.

The officer did not conduct the inventory search according to "standardized criteria" or "established routine" based on some standard other than suspected criminal activity. No inventory list exists from the alleged inventory search. As pointed out in the Motion, the completed CHP 180 Form does not contain a property list whatsoever. (Motion at 7; Garteiser Decl., Ex. E – Completed CHP 180 Form.) The officer did not need to read any documents in the car in order to protect Mr.

Taylor's property or safeguard the police from danger. Accordingly, the search of the car without a warrant was unconstitutional and evidence obtained pursuant to that search must be suppressed. (*Murray v. U.S.* (1988) 487 U.S 533; *Wong v. U.S.* (1963) 371 U.S 471, 485-486.)

III. THE WARRANTLESS SEARCH OF MR. TAYLOR'S IPHONE WAS UNCONSTITUTIONAL.

As the Supreme Court made clear in *Arizona v. Gant*, the search incident to arrest exception does not permit a warrantless search when an arrestee is not within reaching distance of the item, container or area at the time of the search. ((2009) 129 S. Ct. 1710, 1719.) "If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search . . . the [exception] does not apply." (*Id*. at 1716.)[1] The rule is clear: while a search incident to arrest may be for evidence of the crime, it must be closely tied in time, place, and scope to the offense of arrest. (*Id.* at 1719.) If the defendant is no longer in reaching distance of the item, police may not search it incident to arrest. The case the prosecutor cites to the contrary, *People v. Rege* (2005) 130 Cal.App.4th 1584, relies heavily on its interpretation of *New York v. Belton* (1981) 453 U.S. 454. But *Belton* has been strictly narrowed by *Gant* and to the extent that either *Belton* or *Rege* suggest that search incident to arrest applies after the defendant is immobilized, those cases have been overruled.

Here, Mr. Taylor was in custody at the police station when Detective Bocci searched the iPhone on the evening following the arrest. (Garteiser Decl., ¶ 11.) There was no possibility that Mr. Taylor could access the iPhone under these circumstances, so the exception to the warrant requirement does not apply. Indeed, courts throughout the country have found that the search incident to arrest exception does not permit the warrantless search of a cell phone at the police station hours after arrest.[2]

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[1] *Gant* also found that "circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." (*Id*. at 1719 (internal quotation marks omitted.)) Because this is not a case involving a search of a vehicle, this extension of the doctrine does not apply here.

[2] (*See*, *e.g*., *U.S. v. Park* (N.D. Cal. May 23, 2007) 2007 WL 1521573 (unpublished) (warrantless search of cell phones at police station an hour and a half after arrest not incident to arrest); *U.S. v.*

Furthermore, the police may not use the time- and space-delineated search incident to arrest as an exploratory rummaging for evidence. "The principal evil sought to be forestalled, of course, is the invasion of individual privacy by wholesale exploratory searches conducted under color of governmental authority." (*People v. Superior Court (Keifer)* 3 Cal.3d 807, 813-41 (1970) (citations omitted)). For this reason, "[t]he scope of the search must be strictly tied to and justified by the circumstances" of the arrest. (*Id.* (internal quotation marks omitted.))

The prosecutor relies on *Keifer* to argue that police officers may conduct a search incident to arrest "for instrumentalities used to commit the offence." (*See* Opposition at 8-9.) This reliance is misplaced. In *Keifer*, the Court invalidated a search of a car after the occupants had been arrested following a traffic violation. (*Id.* at 812-13.) Rather than finding that *any* evidentiary search is proper incident to arrest, *Keifer* sets forth an additional ground on which to invalidate a search made at the time of arrest: that the scope of the search extended beyond that justified by the offense. (*Id.* at 813 (while the vehicle was the "instrumentality" used to commit the traffic violation, the police could not justify a search the vehicle's interior incident to arrest.)) Here, not only was the warrantless search of Mr. Taylor's iPhone improper because it occurred long after and far from the scene of arrest, but also because the police had no cause to believe that any information relevant to Mr. Taylor's effort to purchase Blackberry phones would be found on his iPhone. Thus, all evidence seized from the device should be suppressed.

IV. THE WARRATLESS SEARCH OF MR. TAYLOR'S IPHONE VIOLATED THE STORED COMMUNICATIONS ACT.

The prosecutor contends that the Stored Communications Act is inapplicable here because "nowhere is there any information that the iPhone was locked or otherwise password protected."

Lasalle (D. Haw. May 9, 2007) 2007 WL 1390820, at *7 (unpublished) (warrantless search of cell phone a few hours after arrest during booking not incident to arrest); *U.S. v. Wall* (S.D. Fla. Dec. 22, 2008) 2008 WL 5381412, at * 3 (warrantless search of cell phone during booking not incident to arrest); *U.S. v. Yockey* (N.D. Iowa Aug. 3, 2009) 2009 WL 2400973, at *5 (unpublished) (warrantless search of cell phone after suspect had been taken into custody and booked not incident to arrest); *State v. Smith* (Ohio 2009) 2009 Ohio 6426, P24 (police may not search a cell phone's contents incident to a lawful arrest without first obtaining a warrant).)

(Opposition at 9.) As Mr. Taylor's declaration makes clear, however, his iPhone was indeed password protected, as was his email account. (Taylor Decl., ¶ 8.) Mr. Taylor did not consent to have his iPhone searched, and Detective Bocci was not authorized to access the remote server on which Mr. Taylor's email was stored. (Taylor Decl., ¶ 8.) If he accessed Mr. Taylor's email without Mr. Taylor's authorization, Detective Bocci violated 18 U.S.C. § 2701(a)'s prohibition against "intentionally access[ing] without authorization a facility through which an electronic communication service is provided" and "thereby obtain[ing] . . . access to a wire or electronic communication while it is in electronic storage in such system." (18 U.S.C. § 2701(a).) The prosecutor has neither asserted that Mr. Taylor's stored emails were not accessed, nor offered any evidence to show that Detective Bocci's access was authorized.

V. INSUFFICIENCY OF THE WARRANT

When excised of improperly seized information, the affidavit in support of the search warrant fails to establish any nexus between the offense conduct and Mr. Taylor's iPhone. Without the officer's exploratory rummaging, there is simply no information in the affidavit that provides probable cause to believe that Mr. Taylor's phone contained any evidence about the Blackberry purchase effort. The prosecutor can point only to boilerplate language included in the affidavit at pages 8 and 9. But that language fails to connect Mr. Taylor's iPhone to this or any other offense. It is merely the usual verbiage included in search warrant applications for phones. What is lacking is a reason to believe that Mr. Taylor used his phone in any way connected to the alleged scheme such that one could reasonably believe that relevant evidence would be found on the device. Without that connection, the affidavit is insufficient and the subsequent warrant must be quashed.

CONCLUSION

For the reasons stated here and in the Motion, all evidence obtained from the car and the iPhone must be suppressed. Furthermore, the warrant should be quashed, and any evidence obtained pursuant to it suppressed.

DATED: February 16, 2010

By _____
Randall Garteiser, Esq. (Cal Bar # 231821)
SINGER & GARTEISER LLP

Jennifer Granick, Esq. (Cal Bar # 168423)
Marcia Hofmann, Esq. (Cal Bar # 250087)
ELECTRONIC FRONTIER FOUNDATION

Attorneys for Defendant
CHRISTIAN TAYLOR