

1 Kevin P. Rooney, #107554  
2 Of Counsel, HAMMERSCHMIDT LAW CORPORATION  
3 2445 Capitol Street, Suite 215  
4 Fresno, CA 93721  
5 Tel: (559) 233-5333  
6 Fax: (559) 233-4333

7 Attorney for Defendant, Donald Clinton

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF TULARE

10 PEOPLE OF THE STATE OF CALIFORNIA, )

11 Plaintiff, )

12 vs. )

13 DONALD CLINTON, )

14 Defendant. )

Case No.: PCF411566

**DEFENDANT DONALD CLINTON'S  
MOTION TO COMPEL PRODUCTION  
OF DISCOVERY MATERIALS IN  
SUPPORT OF A SELECTIVE  
PROSECUTION/SELECTIVE  
ENFORCEMENT MOTION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

Date: July 21, 2022

Time: 8:30 a.m.

Department: 18

15  
16  
17  
18  
19 Defendant DONALD CLINTON, through undersigned counsel, respectfully moves this  
20 court pursuant to the United States Constitution's Fourteenth Amendment Equal Protection  
21 Clause, for an order compelling the Tulare County District Attorney's Office and Tulare County  
22 Sherriff's Office to provide Mr. Clinton with documentary evidence and information (as set forth  
23 herein), so that Mr. Clinton may provide further justification for the ultimate sanction of  
24 dismissal.

25 This memorandum summarizes evidence that in this case the Tulare County Sherriff's  
26 Office undertook and prioritized the investigation, asset seizures, and recommendation for  
27 prosecution to favor political supporters, the alleged victim E.M. Tharp and its owners. This  
28 memorandum will also establish that in contrast to the prosecution of Mr. Clinton for filing false

1 tax returns, E.M. Tharp and the individuals who controlled that business, were not investigated  
2 or prosecuted for tax offenses, despite the widely publicized disclosure of their tax improprieties  
3 by the Court of Appeal for the Fifth District of California.

4 Moreover, Mr. Clinton has satisfied the requirements of *United States v. Armstrong*, 517  
5 U.S. 456 (1996), which held that in the absence of direct evidence of impermissible  
6 discriminatory practices, a defendant is nevertheless entitled to discovery if he provides “some  
7 evidence” that similarly situated people have not been prosecuted and that her investigation and  
8 prosecution were caused by improper discriminatory motivations. This motion will request  
9 discovery of information from Tulare County Sherriff’s Office and the Tulare County District  
10 Attorney to further the anticipated request that the court invoke the required remedy for selective  
11 investigation or selective prosecution, which is dismissal of the case if the court finds that either  
12 Tulare County Sherriff’s Office or the Tulare County District Attorney’s actions were motivated  
13 by improper discriminatory motivations.

14 This motion is based upon the attached memorandum of points and authorities, the  
15 supporting documents and a declaration by counsel all of which are served and filed herewith,  
16 and all files and records in this case, and such further testimonial and documentary evidence and  
17 argument as may be presented at the hearing on this motion.

18  
19 **MEMORANDUM IN SUPPORT OF MOTION FOR DISCOVERY OF MATERIALS**  
20 **RELATED TO SELECTIVE PROSECUTION/SELECTIVE ENFORCEMENT**

21 **I.**

22 **SUMMARY OF ARGUMENT**

23 Mr. Clinton has been subjected to selective and discriminatory investigation and  
24 prosecution. The Tulare County Sherriff’s Office undertook and prioritized the investigation,  
25 asset seizures, and recommendation for prosecution, because the alleged victim E.M. Tharp and  
26 its owners Morris and Casey Tharp, are political supporters of the Sherriff and the District  
27 Attorney. E.M. Tharp Inc. and its individual father and son owners, Morris and Casey Tharp,  
28 have been regular political contributors to the Tulare County Sherriff and the Tulare County  
District Attorney.

1 Mr. Clinton is being prosecuted for filing false tax returns. By contrast, E.M. Tharp and  
2 the individuals who controlled that business, were not investigated or prosecuted for tax  
3 offenses, despite the widely publicized disclosure of their tax improprieties by the Court of  
4 Appeal for the Fifth District of California. When EM Tharp raised concerns about suspected  
5 embezzlement by Mr. Clinton, the Sherriff's Office responded immediately, proving EM Tharp  
6 with special priority and deference. When Mr. Clinton tried to withdraw his own money, held in  
7 a 104K account, the Sheriff's Department immediately and unlawfully restrained those funds.

8 Mr. Clinton is entitled to discovery of information from Tulare County Sheriff's  
9 Department and the Tulare County District Attorney to further the anticipated request that the  
10 court invoke the required remedy for selective investigation or selective prosecution, which is  
11 dismissal of the case if the court finds that either Tulare County Sheriff's Department or the  
12 Tulare County District Attorney actions were motivated by improper discriminatory motivations.

## 13 II.

### 14 RELEVANT FACTS

15 E.M. Tharp is a third generation family owned business headquartered in Porterville. *See,*  
16 [www.emtharp.com/about](http://www.emtharp.com/about). The corporation and its current owners, Morris Tharp and Casey  
17 Tharp, are active in local politics. Public records reveal over \$4,000. in campaign donations to  
18 the Tulare County Sherriff between 2013-16 and approximately \$600. donated to the current  
19 District Attorney's campaign in 2018. *See,* Att. 1 and 2, Counsel's declaration and summary of  
20 public records.<sup>1</sup> Counsel is informed and believes the Sherriff and the District Attorney have also  
21 politically benefited from the Tharps' participation in activities such as the Businessmen's Lunch  
22 in which favored candidates are invited to meet with prominent community members. *See, Att. 1.*

23 On a Thursday evening, June 15, 2018, the Tulare County Sherriff's Office learned of an  
24 allegation that Mr. Clinton had embezzled funds from E.M. Tharp Inc. *See,* Attachment 3, Tulare  
25 County Search Warrant, Affidavit, and Return No. ---013216. At 8:00 a.m. the next morning a  
26 detective met with a witness regarding those allegations. *Id.* By 2:30 p.m. on Monday, June 18, a  
27 search warrant for Mr. Clinton's residence had been prepared, presented, and authorized by the

28 \_\_\_\_\_  
<sup>1</sup> The public records themselves have been provided to the District Attorney by the defense.

1 Court. *Id.* At 4:45 p.m., on June 18, Sherriff’s deputies began to search Mr. Clinton’s home  
2 pursuant to that warrant. *Id.*

3 In August 2019, a request from Casey Tharp resulted in immediate action by the Tulare  
4 County Sherriff’s Office against Mr. Clinton. *See*, Att. 4, a Tulare County Sheriff’s Dept. Report,  
5 Bates 121- 128. At 10:45 a.m. on Monday, August 26, 2019, Tulare County Sherriff Sgt.  
6 informed Det. McLean that Casey Tharp reached out to the Sherriff’s Office for assistance. *Id.*  
7 Casey Tharp had reported that Mr. Clinton was trying to access funds held in Clinton’s 401K  
8 retirement account associated with E.M. Tharp. *Id.* Within an hour, Det. McLean travelled to  
9 E.M Tharp’s office and reviewed documentation regarding Mr. Clinton’s 401k account. *Id.*  
10 Those documents revealed that Mr. Clinton had personally made all the contributions to the  
11 401K account. *Id.*

12 Det. McLean prepared a “three day hold” and instructed the responsible parties at E.M.  
13 Tharp not to distribute Mr. Clinton’s funds. *Id.* Before noon the following day, August 27, a  
14 search warrant freezing Mr. Clinton’s funds had been prepared, presented, and authorized by the  
15 Court. *Id.* Det. McLean then drove back to the E.M. Tharp offices, provided the freeze  
16 documents to E.M. Tharp staff, and personally updated Casey Tharp. *Id.* Those funds were  
17 eventually released to Mr. Clinton because there was no legal basis to hold them. *See*, Att. 1  
18 Counsel’s Declaration and Attachment 5, Counsel’s September 24, 2019 letter to the District  
19 Attorney’s Office.

20 The Sherriff’s Office’s responsiveness to EM Tharp’s requests is extremely unusual. *See*,  
21 Counsel’s declaration. The Sherriff’s Office leapfrogged its investigation into Mr. Clinton over  
22 numerous other matters and handled with the Clinton investigation with much greater urgency  
23 than an ‘ordinary’ investigation. *See*, Att. 1, Counsel’s Declaration.

24 In stark contrast to the urgent investigation of Mr. Clinton, law enforcement and the  
25 Tulare County District Attorney’s Office ignored evidence of tax offenses involving E.M. Tharp  
26 and the individuals who controlled that business. In its published decision, *In re Marriage of*  
27 *Tharp* (2010) 116 Cal. Rptr. 3d 375, 380, the 5th District Court of Appeal noted that “On  
28 December 18, 2007, the family court made an order in which it found that Casey [Tharp] had

1 been employed in the family business, earning \$10,100 per month, but that the vast majority of  
2 the family's expenses were paid by the corporation and not reflected as taxable income to the  
3 parties [Casey and Mary Beth Tharp]". The Court of Appeal also noted a declaration by Casey  
4 Tharp's spouse that,

5 "...provided information regarding Casey's income, the family expenses, and the  
6 expenses paid by E.M. Tharp, Inc. (hereafter the corporation). Mary Beth reported  
7 Casey's income in 2005 to be \$132,534, which did not include the family expenses paid  
8 by the corporation. The corporation paid for the family cars, all expenses for those  
9 vehicles, property taxes and insurance for the family home, housekeepers and ranch  
hands employed at the family home, all utilities, cellular telephones, health insurance,  
country club dues, and credit card bills for personal credit cards used by the family." *Id.*

10 Because the 5th District Court of Appeal ordered reassignment of the ongoing family law case to  
11 a different Superior Court Judge, the *In re Marriage of Tharp* decision was widely publicized.  
12 See, Att. 1, Counsel's declaration. However, no one, from the Tharp family or EM Tharp was  
13 investigated or prosecuted for tax offenses. *Id.*

### 14 III.

#### 15 APPLICABLE LAW

##### 16 A. MR. CLINTON WAS SINGLED OUT FOR AN EXPEDITED INVESTIGATION 17 AND EVENTUAL TAX PROSECUTION BECAUSE THE ALLEGED VICTIMS 18 ARE POLITICAL SUPPORTERS OF THE TUALRE COUNTY SHERIFF AND 19 DISTRICT ATTORNEY

20 The Fourteenth Amendment to the United States Constitution, and article I, section 7,  
21 subdivision (a) of the California Constitution prohibit all state action which denies to any person  
"equal protection of the laws."

22 Investigation or prosecution cannot be based on political activity. *People v. Serna* (1977)  
23 71 Cal. App.3d 229, 235. The United States Supreme Court has recognized that the equal  
24 protection clause is violated if a criminal prosecution is "deliberately based on an unjustifiable  
25 standard such as race, religion, or other arbitrary classification." *Oyler v. Boles* (1962) 368 U.S.  
26 448, 456, 82 S.Ct. 501. "Neither the federal nor state Constitution countenances the singling out  
27 of an invidiously selected class for special prosecutorial treatment, whether that class consists of  
28 black or white, Jew or Catholic, Irishman or Japanese, United Farm Worker or Teamster. If an

1 individual can show that he would not have been prosecuted except for such invidious  
2 discrimination against him, a basic constitutional principal has been violated, and such a  
3 prosecution must collapse upon the sands of prejudice.” *Jose Guadalupe Murgia, et al. v. The*  
4 *Municipal Court for the Bakersfield Judicial District of Kern* (1975) 15 Cal.3d 286, 290, 124  
5 Cal.Rptr. 204.

6  
7 **B. LAW ENFORCEMENT HAS A DISCRIMINATORY EFFECT WHEN**  
8 **MEMBERS OF A PROTECTED GROUP RECEIVE LESS FAVORABLE**  
9 **TREATMENT THAN NON-MEMBERS**

10 A defendant claiming unequal enforcement of a facially neutral statute must show both  
11 that the enforcement had a discriminatory effect, and that the enforcement was motivated by a  
12 discriminatory intent. *United States v. Armstrong*, 517 U.S. 456, 468 (1996). To obtain  
13 discovery on these issues, the defendant need not establish a prima facie case of selective  
14 enforcement. *United States v. James*, 257 F.3d 1173, 1178 (10<sup>th</sup> Cir. 2001) citing, *Armstrong*,  
15 517 U.S. at 468. Instead, a defendant must simply present “some evidence tending to show the  
16 existence of the essential elements of the [selective enforcement] claim (i.e. discriminatory effect  
and discriminatory intent).” *Id.* at 468.

17 A defendant is not required to establish that selective enforcement was accompanied by  
18 the intent to punish the defendant for membership in a protected class. *Baluyut v. Superior Court*,  
19 (1996) 12 Cal.4<sup>th</sup> 826, 833-34.

20 A defendant seeking discovery on a selective enforcement claim must meet the same  
21 ordinary equal protection standards outlined for selective prosecution claims. *United States v.*  
22 *Barlow*, 310 F.3d 1007, 1010 (7<sup>th</sup> Cir. 2000).) While the legal standards for examination of the  
23 issue of selective prosecution and enforcement are the same, the factual analysis is distinct. If a  
24 selective enforcement claim is based on the investigative phase of the prosecution, the defendant  
25 must make a credible showing that a similarly-situated individual of another race or class could  
26 have been, but was not, arrested or referred for federal prosecution for the offense for which the  
27 defendant was arrested and referred. *United States v. James*, 257 F.3d 1173, 1179 (10<sup>th</sup> Cir.  
28 2001), citing, *United States v. Armstrong*, 517 U.S. at 465.

1           **a. Arbitrary Classification/Invidious Treatment**

2           Mr. Clinton has been placed in an arbitrary class – a person disfavored by E.M. Tharp  
3 and its owners. Put another way, the Tulare County Sherriff and the Tulare County District  
4 Attorney are rewarding their political supporters by selectively investigating and enforcing the  
5 law against an individual disfavored by their supporters.

6           **b. Discriminatory Effect**

7           Long-standing equal protection jurisprudence recognizes that some measure of selectivity  
8 in the law enforcement arena is constitutionally permissible. (See *Oyler v. Boyles*, 368 U.S. 448  
9 (1962); *United States v. Borrego*, 66 Fed. Appx. 797 (10<sup>th</sup> Cir. May 20, 2003).) With that  
10 recognition, courts have required a defendant to make a credible showing that a similarly situated  
11 individual of another race or ethnicity could have been subjected to the same law enforcement  
12 action as the defendant, but was not. *James*, 257 F.3d at 1179, citing, *Armstrong*, 517 U.S. at  
13 465.

14           In this case, Mr. Clinton is charged with filing false tax returns. However, when evidence  
15 of tax improprieties by EM Tharp and the individuals running that business was made available  
16 in the published *In re marriage of Tharp* decision, no investigation or prosecution followed.  
17 Disparate treatment afforded the Sherriff and District Attorney’s political supporters, and  
18 someone – Mr. Clinton - disfavored by those political supporters, is clear. Mr. Clinton was  
19 investigated and prosecuted. Tax improprieties by EM Tharp and the individuals running that  
20 business were ignored.

21           **c. The Tulare County Sherriff’s Department Handles Matters Involving EM Tharp  
22 and Casey and Morris Tharp Differently Than Matters involving “Ordinary”  
23 Crime Victims**

24           Complaints from EM Tharp or Casey Tharp received immediate attention from the Sherriff’s  
25 Dept. EM Tharp’s Thursday evening message about suspected embezzlement resulted in an 8:00  
26 a.m. Friday morning witness interview and a search warrant execution at Mr. Clinton’s home on  
27 Monday evening. Mr. Clinton’s attempt to access his own 401K funds resulted in an immediate  
28 response by the Sheriff’s Department, the unlawful restraint of Mr. Clinton’s funds, and personal

1 reports to Casey Tharp by the responsible Sheriff's Detective. That extraordinary level of service  
2 is evidence of favoritism.

3 **IV.**

4 **CONCLUSION**

5 Mr. Clinton has been singled out by the Tulare County Sheriff's Department and District  
6 Attorney's Office because he was accused of a crime against EM Tharp and Casey and Morris  
7 Tharp's interests.

8 Therefore, Ms. Clinton is entitled to a court order requiring the Tulare County District  
9 Attorney's Office and Sheriff's Department to produce the following additional discovery that  
10 will prove that this was an egregious example of selective prosecution and selective enforcement  
11 in violation of Mr. Clinton's rights under the United States Constitution:

12 **The Tulare County Sheriff's Department shall provide:**

13 A. All writings and tangible things **evidencing communication between Tulare County**  
14 **Sheriff's Department peace officers and employees, or between any employees and**  
15 **officers of Tulare County Sheriff's Department and any employee of the Tulare County**  
16 **District Attorney's Office, including attorneys, investigators and staff, including, but not**  
17 **limited to:**

- 18 1. all recordings;
  - 19 2. reports;
  - 20 3. emails;
  - 21 4. telephone records;
  - 22 5. personal cell phone records;
  - 23 6. business cell phone records;
  - 24 7. car-to-car automated messages;
  - 25 8. computer-generated documents;
  - 26 9. notes; and
  - 27 10. memorandums.
- 28



- 1 B. The name and title of each employee and peace officer involved in any manner in the  
2 investigation of this case, including assigning work in this case, and prioritizing work in  
3 this case as compared to work in other matters or other responsibilities.
- 4 C. The name and title of each employee and peace officer involved in the decision-making  
5 process in the investigation of this case.
- 6 D. All writings establishing procedures for prioritizing investigating allegations of  
7 embezzlement.
- 8 E. All writings establishing procedures for investigating allegations of tax offenses  
9 including but not limited to allegations of filing false tax returns.
- 10 F. All writings establishing any procedures that allegations involving any particular person  
11 or group, including but not limited to EM Tharp, Inc. Casey Tharp, Morris Tharp, as an  
12 alleged victim, are to be given priority for investigation or other actions.
- 13 G. All writings establishing procedures that all allegations regardless of the alleged victim,  
14 are to be given equal priority for investigation or other action.
- 15 H. All writings establishing procedures that all allegations regardless of the alleged victim,  
16 are to be given equal priority for investigation or other action.
- 17 I. All writings relating to any investigation of E.M. Tharp and/or the individuals who  
18 controlled that business for any tax offense.

19  
20 **The Tulare County District Attorney's Office shall provide:**

- 21 A. All writings and tangible things **evidencing communication between Tulare County**  
22 **Sherriff's Dept. peace officers and employees, or between any employees and**  
23 **officers of Tulare County Sherriff's Dept. and any employee of the Tulare County**  
24 **District Attorney's Office, including attorneys, investigators and staff** regarding this  
25 case, including, but not limited to:
- 26 1. all recordings;
  - 27 2. reports;
  - 28 3. emails;

- 1 4. telephone records;
- 2 5. personal cell phone records;
- 3 6. business cell phone records;
- 4 7. car-to-car automated messages;
- 5 8. computer-generated documents;
- 6 9. notes; and
- 7 10. memorandums.

8 E. The name and title of each employee, investigator and attorney involved in the  
9 investigation of this case.

10 F. Any and all writings related to the decision to return Mr. Clintons 401K funds seized on  
11 or about August 27, 2019.

12 H. All writings establishing procedures for determining the filing guidelines for allegations  
13 of filing a false tax return.

14 I. All writings relating to the decision to file charges of a filing false tax returns in this case.

15 J. All writings relating to establishing procedures for determining filing guidelines for  
16 allegations of domestic vandalism.

17 J. All writings establishing establishing any procedures that allegations involving any  
18 particular person or group, including but not limited to EM Tharp, Inc. Casey Tharp,  
19 Morris Tharp, as an alleged victim, are to be given priority for investigation, prosecution  
20 or other actions.

21 K. All writings establishing procedures that all allegations regardless of the alleged victim,  
22 are to be given equal priority for investigation, prosecution, or other action.

23 L. All writings relating to any investigation or prosecution of E.M. Tharp and/or the  
24 individuals who controlled that business for any tax offense.

25 ///

26 ///

27 ///

28 ///

1 "All writings and tangible things" includes the definition of writings set forth in  
2 California Evidence Code section 250.

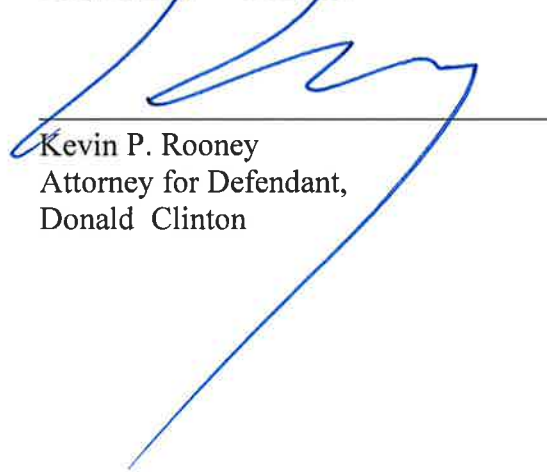
3 "Suspect/defendant" refers to the person for whom law enforcement referred the case to  
4 the District Attorney's Office for review or prosecution.

5 "Employee of any law enforcement agency" includes any employee, whether or not a  
6 sworn peace officer.

7  
8 Dated: June 28, 2022

Respectfully Submitted,

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



---

Kevin P. Rooney  
Attorney for Defendant,  
Donald Clinton

# Attachment 1

1 Kevin P. Rooney, Of Counsel, # 107554  
2 HAMMERSCHMIDT LAW CORPORATION  
3 2445 Capitol Street, Suite 215  
4 Fresno, CA 93721  
5 Tel: (559) 233-5333  
6 Fax: (559) 233-4333

7 Attorney for Defendant, Donald Clinton

8  
9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF TULARE  
11

12 PEOPLE OF THE STATE OF CALIFORNIA, )  
13 Plaintiff, )  
14 vs. )  
15 DONALD CLINTON, )  
16 Defendant )

Case No.: PCF411566

**DECLARATION OF ATTORNEY KEVIN  
P. ROONEY IN SUPPORT OF  
DEFENDANT DONALD CLINTON'S  
MOTION TO COMPEL PRODUCTION  
OF DISCOVERY MATERIALS IN  
SUPPORT OF A SELECTIVE  
PROSECUTION/SELECTIVE  
ENFORCEMENT MOTION**

17 I, Kevin P. Rooney, declare:

- 18 1. I am a duly licensed attorney and represent Mr. Clinton in the above-matter.
- 19 2. I drafted the Motion to Compel Production of Discovery Materials in Support of a  
20 Selective Prosecution/Selective Enforcement Motion; Memorandum of Points and  
21 Authorities in Support
- 22 3. I obtained Att. 3, search warrant No. 18-7921 material, from the Tulare County  
23 Superior Court Clerk's Office. Att. 4, Tulare County Sheriff's Dept. Supplemental  
24 report Bates numbers 121-128, was provided by the District Attorney's Office in  
25 discovery.
- 26 4. I drafted and sent Att. 5, the September 2019 letter to the District Attorney's Office.  
27 I also discussed the issues described in that letter with the then assigned Deputy  
28

1 District Attorney. Based on the issues raised in the September 2019 letter, Mr.  
2 Clinton's seized 401K funds were returned to him.

- 3 5. I caused public records requests for political contributions by EM Tharp, Inc., Morris  
4 Tharp, and Casey Tharp, to be sent to the Tulare County Registrar of Voters.  
5 Voluminous records were provided by that office and I provided copies of them to the  
6 then assigned Deputy District Attorney. Attachment 2 is an accurate summary of  
7 donations by EM Tharp, Inc., Morris Tharp, and Casey Tharp, as revealed in the  
8 Registrars' records.
- 9 6. I am informed and believe that Casey Tharp participated in the Businessmen's Lunch  
10 group and that political candidates including the current Tulare County Sheriff and  
11 District Attorney were guests at Businessmen's Lunch functions. I am further  
12 informed and believe that the Businessmen's Lunch functions enabled political  
13 candidates to meet prominent community members. I am also informed and believe  
14 that on occasion Casey Tharp provided the food and beverages for the Businessmen's  
15 Lunch and prepared the food using his professional grade portable kitchen facility.
- 16 7. From discussions with assigned Deputy District Attorneys, I am informed and believe  
17 the decision in *In re Marriage of Tharp*, was widely publicized and known to many  
18 practicing attorneys primarily because the Appellate Court ordered re-assignment of  
19 the family law case to a different Superior Court Judge. I am also informed and  
20 believe, that there was no investigation or prosecution of E.M. Tharp or any  
21 individuals that controlled that business despite the decision's discussion of tax  
22 improprieties.
- 23 8. I have been practicing criminal law in the Central Valley of California since 1990.  
24 Based on that experience, the Tulare County Sheriff's Office immediate response and  
25 sustained efforts when contacted by EM Tharp personnel and/or Casey Tharp is very  
26 unusual. Due to limited law enforcement resources and pre-existing caseloads, law  
27 enforcement ordinarily responds immediately to life threatening or time-sensitive,  
28 urgent matters. A suspected embezzlement is not usually considered time sensitive or

1           urgent. An individual's efforts to access 401K funds is not usually considered time  
2           sensitive or urgent. It is also unusual for a Detective to note in an investigative report  
3           that he briefed a business owner on progress in a matter.

4 I declare under penalty of perjury under the laws of the State of California that as to the matters  
5 set forth above and as to which I have personal knowledge that the foregoing is true and correct  
6 and as to other matters, that I believe them to be true and correct.

7  
8 Executed this 28<sup>th</sup> day of June 2022, at Fresno, California.

9  
10  
11  
12   
13 Kevin P. Rooney  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Attachment 2



<b>Tharp donation's</b>			<b>Year</b>	<b>Amount</b>
Casey Tharp	Ward, Timothy	District Attorney 2018	2018	\$100
Morris Tharp- E.M Tharp, Inc	Ward, Timothy	District Attorney 2018	2018	\$500
E.M. Tharp Inc.	Whittman, Bill	Sheirff 2010	2009	\$200
Morris Tharp	Boudreaux, Mike	Sheirff	2013	\$120
Morris Tharp	Boudreaux, Mike	Sheriff 2014	2013	\$120
Morris Tharp	Boudreaux, Mike	Sheirff 2014	2013	\$120
Casey Tharp	Boudreaux, Mike	Sheirff 2014	2014	\$250
Casey Tharp	Boudreaux, Mike	Sheirff 2014	2014	\$250
Casey Tharp	Boudreaux, Mike	Sheirff 2014	2014	\$250
Casey Tharp	Boudreaux, Mike	Sheirff 2018	2016	\$2,500
Casey Tharp	Boudreaux, Mike	Sheirff 2014	2014	\$250
Casey Tharp- E.M Tharp	Boudreaux, Mike	Sheriff 2022	2019	\$500
Morris Tharp- E.M. Tharp Inc	Wittman, Bill	Sheriff 2010	2009	\$200
<b>Other Donations:</b>				
Tharps Trucking-Sherl Smith	Pengilly, Del	County 5th District Supervisor	2006	\$100
Morris Tharp	Judge Glade Roper		2002	\$200
Casey Tharp	Judge Glade Roper		2002	\$100
Michael F. Tharp & Associates	Maze	Citizens for Public Safety Committee In Support of Measure T	2004	\$100
Morris Tharp- Tharp Trucking	Ennis, Mike	For Assembly	2004	\$150
Morris Tharp- E.M Tharp, Inc		5TH DISTRICT SUPERVISOR	2006	\$300
Michael Tharp- Michael F. Tharp & Associates		FRIENDS OF PETE VANDER POEL	2008	\$300
Morris Tharp- E.M. Tharp Inc	Connie Conway	for Assembly	2008	\$1,000
E.M. Tharp Inc	Mike Ennis	5TH DISTRICT SUPERVISOR	2009	\$300
SUE SCHAFFER THARP	PETE VANDERPOEL		2011	\$375
Morris Tharp	Richard Hatfield	Re-Elect Director Sierra View Local HC Hospital Board	2012	\$200
Casey Tharp	Mike Ennis	5th Distrct Supervisor 2014	2014	\$250
Casey Tharp- E.M Tharp	Dennis Townsend	Supervisor 2018	2018	\$500
E.M. Tharp Inc. OBA Golden State Peterblt	Larry Micari	Supervisor 2020	2019	\$500

# Attachment 3

SW NO. TCSO 18-7921

018216

# STATE OF CALIFORNIA - COUNTY OF TULARE SEARCH WARRANT AND AFFIDAVIT (AFFIDAVIT)

Your Affiant, Andrew G. Diaz, swears under oath that the facts expressed by him in the attached and incorporated Statement of Probable Cause are true and that based thereon (he/she) has probable cause to believe and does believe that the property described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the location(s) set forth below. Wherefore, affiant requests that this Search Warrant be issued.

  
(Signature of Affiant)

## (SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN, OR PEACE OFFICER IN THE COUNTY OF TULARE: proof by affidavit having been made before me by Andrew G. Diaz, that there is probable cause to believe that the property described herein may be found at the locations set forth herein and that property is lawfully seizable pursuant to Penal Code Section 1524 as indicated below in that:

- The property was stolen or embezzled.
- The property or things were used as the means of committing a felony.
- The property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.
- The property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.
- The property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.
- There is a warrant to arrest a person.

## DESCRIPTION


**YOU ARE THEREFORE COMMANDED TO SEARCH:**

THE PREMISES AT:

LOCATION #1: THE PREMISES at 1339 E. Carmelo Avenue, Tulare, CA. 93274

Described as: A single-story wood framed home, tan in color facing north with blue trim, and a partially white front door. The roof is comprised of brown shingles and includes an attached two car garage facing north. On the residence, on the west side of the front door, the numbers "1339" are affixed to the residence's wood siding. There is a mailbox, on the west side of the cement driveway, with the numbers "1339" attached to it in the form of a sticker. Below the mailbox, on the cement city curb, are the numbers "1339" painted in black and white numbers. There is a large pane of glass facing north, on the east side of the front door, and two windows on the west side of the front door.

FOR THE FOLLOWING PROPERTY: See attachment "A"

FILED  
TULARE COUNTY SUPERIOR COURT  
JUN 24 2018  
BY STEPHANIE LAWRENCE, CLERK  


# ATTACHMENT "A"

## FOR THE FOLLOWING PROPERTY:

- 1) Bank Account Records including: account numbers, deposits, withdrawals, voided checks, monthly statements and portfolio information including records of investment accounts and assets, Tax ID numbers, returns or statements.
- 2) Any calendars, daily planners, logs, ledgers, and or any listings of transfer of monetary funds.
- 3) Any items tending to establish the identity of persons who have dominion and control of the location, premises, or items to be seized, including delivered mail, whether inside the location or in the mail box(es), bills, utility bills, telephone bills, miscellaneous addressed mail, personal letters, personal identification materials, purchase receipts, rent receipts, sales receipts, tax statements, payroll check stubs, keys and receipts for safe deposit box(es), keys and receipts for rental storage space, keys and receipts for post office box or mail drop rentals, recordation of voice transmissions on telephone answering machines, audio tapes and telephone message receipt books, and written phone messages, and photographs tending to show occupation of the residence / business and connection between co-conspirators, whether identified or unidentified, also digital pagers which will document telephone numbers of co-conspirators, and if found, to activate the digital pagers' display mechanism and to obtain messages from the pagers, answering machines, tape recorders, and any other recording devices, and to play such devices to obtain their contained information.
- 4) Electronic communication devices including cell phones, computers, smartphones, disc drives, thumb drives, laptops (including their storage which may contain any data), external hard drives, documents or messaging or e-mails related to the crime and/or the identification of the suspects and the ownership of the devices as well as business transactions with identified and potentially unidentified victims.
- 5) Safes, File Cabinets, Lock boxes or hard sided storage containers including sea train containers on the property. And to open them on the premises to examine their storage contents. (SEE ATTACHMENT "B") If opening them on the premises is not convenient or conducive, these containers, safes or lock boxes are to be removed from the property and accessed at the convenience of TCSO personnel.
- 6) Any and all vehicles on the property as well as those arriving at the time of the service.
- 7) Any and all persons on the property who may be in possession of communication devices including smartphones, cellphones, pagers, palm pilots, and tablets. Who may also be in possession of notebooks, notes, ledgers, receipts, or documents showing the transfer of funds.
- 8) Any property or items determined to have been stolen or belonging to the victim's company in this investigation.

AND TO SEIZE IT IF FOUND and bring it forthwith before me, or this court, or retain in your custody according to section 1536 of the California Penal Code. This Search Warrant, Affidavit and attached incorporated Statement of Probable Cause were sworn to as true under penalty of perjury and subscribed before me this 18<sup>th</sup> day of June, 2018 at 2:30 A.M. P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

NIGHT SEARCH REQUESTED: YES  NO

NIGHT SEARCH APPROVED: YES  NO

Judge of the Superior, County of Tulare

Nathan G. Leedy



## ATTACHMENT "B"

With regard to section 5 within attachment "A". Your affiant is requesting a court order to have the **Safes, File Cabinets, Lock boxes or hard sided storage containers including sea train containers on the property**, opened by Don Clinton. This should take place in the presence of Detectives accompanying your affiant during the service of this search warrant. Don Clinton is to physically manipulate the dial, locks or key pads on the aforementioned **Safes, File Cabinets, Lock boxes or hard sided storage containers including sea train containers on the property** to reveal their contents. It is not the desire of your affiant to remove or collect firearms pursuant to this search warrant, however it is your affiant's desire to determine if any financial documentation concealed in these spaces be shown and provided. Furthermore, by requiring Don Smith to physically open these **Safes, File Cabinets, Lock boxes or hard sided storage containers including sea train containers on the property**, this will refrain from property damage and or loss, including transportation costs and specialized entry or locksmiths.



Affiant Andrew G. Diaz

Subscribed and sworn to before me on this 18<sup>th</sup> day of June, 2018.



Judge of the Superior Court, County of Tulare

Nathan G. Leedy



# STATE OF CALIFORNIA - COUNTY OF TULARE

## Identification and Expertise of Affiant:

Your affiant, Andrew G. Diaz, states that he is a duly qualified peace officer with the Tulare County Sheriff's Office and has been since his appointment on 01-20-2013. He is currently assigned to the Investigations Division specializing in agriculture crimes. Prior to that, he was assigned to the reserve patrol division for 2 years. Prior to that, your affiant was assigned to Visalia Patrol for 2 years. During this time, your affiant gained experience in investigating numerous crimes, including, but not limited to theft related crimes, assaults, narcotics related crimes, rape, robbery, crimes against children, and fraud-related crimes.

Your affiant, while assigned to the patrol division, has worked closely with other patrol personnel as well as Property Crimes Detectives, and gained experience in investigating numerous crimes including petty theft, grand theft, burglary, identity theft and other property related crimes. In that time your affiant has effected numerous arrests of persons associated with such crimes and testified to those arrests in court. Your affiant has completed a 960 hour Basic Police Academy at the College of the Sequoias in Hanford, CA, in August of 2012. Since the basic academy, your affiant has attended numerous in-service and formal classroom trainings including, but not limited to Gang-Related Crime Investigations and Tactical Sniper Operator's course. He has also attended a 40 hour rural AG crimes prevention and investigation course. In your affiant's tenure as a law enforcement officer he has spoken with and assisted other Officer's Deputies and Detectives with property related crimes resulting in the location and recovery of stolen property as well as the arrest and prosecution of persons responsible for such offences.

Detective Andrew G. Diaz

A handwritten signature in black ink, appearing to read "Andrew G. Diaz", with a long horizontal line extending to the right.

**STATE OF CALIFORNIA - COUNTY OF TULARE**  
**STATEMENT OF PROBABLE CAUSE**

**PROBABLE CAUSE:** I declare under penalty of perjury that the foregoing statement of probable cause is true and correct based on personal knowledge, information and belief.

**6/15/18, 1930 hours:** Detectives were contacted by Sergeant (Sgt.) Rader and informed of a possible fraud issue at EM Tharp, in Porterville. Christina was contacted and informed her of the investigation. Christina was aware of the investigation and agreed to meet with Det. Armstrong regarding this case. Det. Armstrong scheduled the meeting at the Tulare County Sheriff's Office (TCSO) Headquarters on Saturday 6/16/18, at 0800 Hrs. Christina agreed to meet with Det. Armstrong at that time and place.

**6/16/18, 0800 hours:** Det. Armstrong contacted Christina at the TCSO Headquarters Office and escorted her to the Detective's briefing room on the second floor of the Headquarters Office building. Christina provided the following information: Christina started working for EM Tharp in approximately 2002, and hired as the Human Resource Manager working under Nancy Talbot. Christina's starting wage was approximately \$13.50 an hour and throughout her career received a few additional raises in pay. Christina stated when Nancy left the business she began working under Don Clinton. Don Clinton requested Christina to work after hours at home on accounting issues to which she received overtime pay for. Christina stated once the accounting issues were corrected she stopped working after hours at home. Christina began asking Clinton for raises throughout her career however was always denied for unknown reasons. Christina began receiving reimbursement checks along with her regular payroll check in approximately 2009. The reimbursement checks were issued by Don Clinton. Christina stated on top of her payroll check approximately \$1,875.75 was added to her check and she also received an additional check for approximately \$2,211.21 for reimbursements.

Christina stated she received approximately \$4,000.00 extra a pay period in reimbursements. Christina stated she questioned Don about the reimbursement checks and continued to ask for a pay raise instead. Don would tell Christina this method was a better way to go. Christina stated she did not know what the reimbursement check was for or how it was justified. Christina stated she was afraid to mention the reimbursement checks to Casey Tharp because she has heard Casey state several times Don was very valuable to the company and they could not afford to let him go. Christina stated she did not mention the reimbursement checks to Bruce Greer because she was intimidated by him. Christina stated part of her job assignment was to review the completed time cards for the employees through "Pay Checkx" Preview. Once the timecards were calculated before she sent them out to Payroll, Don requested the files be sent to him for review and reimbursement add-ons. Christina stated Don would add the reimbursement amounts to payroll and email them back to her. Christina stated she never reviewed the files prior to sending them to Payroll.

Christina stated she began looking through the files and noticed Don was paying himself approximately \$6,000.00 to \$8,000.00 per pay period. Christina stated Don receives three to four checks per pay period due to all the extras he has such as vehicle allowance and other reimbursements. Christina stated Don's daughter Michelle started working in Payroll approximately two years ago and is also receiving approximately \$200.00 to \$300.00 in reimbursements per pay period on top of her payroll check. Christina stated there were approximately four to five other employees that worked under Don that are no longer employed at EM Tharp who received reimbursement checks. Christina stated once Bruce Greer was terminated from the business

Christina began working closer with Casey Tharp. Christina stated she had a good working relationship with Casey and became more comfortable with talking to Casey about work related issues. Christina recently mentioned to Casey about the issues with the reimbursement checks. Christina stated she was willing to assist with the investigation and provided her User name and passwords for her computer system accesses. Email: christinaarias@emtharp.com password: C0wboys!


Pay Checkx Preview user name: egomez; Computer login: 220. Christina advised her office is located on the south wall of the main office west of Casey's office and directly south of the parts desks. Christina's desk is located in the center of the room touching the south wall. On Christina's desk there is a brown name plaque with a gold plate with white lettering "Christina Arias Human Resource Manager". Christina stated the "drive" computer tower is black and is located on the west side of her desk. On the front of the tower is a 4"X6" photograph of her at her graduation taped to the tower. Christina stated she is wearing a maroon colored "cap and gown" in the photograph. Christina stated she is in the process of packing her office due to a scheduled remodel and there are several boxes and files throughout her office. Christina advised Don's office was located on the north side of the office next to the computer room. Christina stated Don's has two work stations in his office, with two separate computers. Christina stated Don also has a mobile work station which he takes home with him.

**6/18/18 – 1300 Hours:**

Det. Diaz spoke with CFIU Detective Franks and Det. Franks advised he checked only 5-years back thus far and it appeared Don Clinton had been embezzling approximately \$200,000 per year. Det. Franks did not complete his analysis of data and an exact number of embezzled money has yet to be established.

DONALD CLINTON'S ADDRESS WAS VERIFIED VIA COMPANY RECORDS, DATABASE SEARCH, AND DMV RECORDS. IT WAS ESTABLISHED DONALD'S RESIDENCE WAS 1339 E. CARMELO AVE, TULARE. AD PV

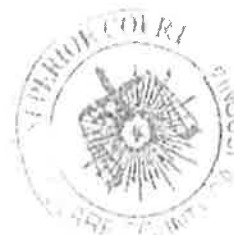
Based on the information contained within the Statement of Probable Cause, your affiant further believes that evidence which tends to show a felony has been committed is currently located at 1339 E Carmelo Avenue, Tulare, CA. Your affiant prays that a search warrant be issued by this court allowing a search of the residence.

  
Affiant Andrew G. Diaz

Subscribed and sworn to before me on this 15 day of June, 2018.

  
Judge of the Superior Court, County of Tulare

Nathan G. Leedy





STATE OF CALIFORNIA - COUNTY OF TULARE



**SEARCH WARRANT RETURN**  
**Property Seizure Inventory**

Case # 18-07921(b)

I, Detective Joseph Armstrong, hereby certify that I received the within warrant on the 18th day of June, 2018 and under its authority, I diligently searched the residence located at 1339 W Carmela St, in Tulare, as follows, to witness:

**Inventory:**

- 1) JN3 - (2) EM Sharp checks located on the kitchen counter
- 2) JN4 - (4) Pieces of Mail from the mailbox
- 3) JN5 - (4) checks form EM Sharp from Computer room
- 4) CF200 - Black Toshiba computer S/N 87216513K from garage
- 5) CF201 - DVR ZMODO ZMD-DD-SBNS from Garage
- 6) CF202 - (3) SD Cards PNY 2GB from Computer room
- 7) CF203 - (6) Dane Elec USB 8GB from Computer room
- 8) CF204 - iPhone X Cell Phone S/N G6YVWQ1HJCL8 from Computer room
- 9) CF205 - External drive WD My Cloud S/N VK6D1VVK from Computer room
- 10) CF206 - External Drive Seagate LRD0TU3 S/N NL1008V2 from Computer room
- 11) CF207 - Apple Mini Mac S/N C07QT0LT61JZ from Computer room
- 12) CF208 - iPod 1606B from Computer room
- 13) CF209 - iPad S/N DLXQWDLYGMW3 from Computer room
- 14) CF210 - iPhone X S/N G6VYNGVCJCL8 from Master Bedroom
- 15) CF211 - iPad S/N DLXRC4UDGMW7 from master bedroom
- 16) CF212 - iPad from master bedroom
- 17) CF213 - iPad from computer room
- 18) CF214 - Mac book Pro S/N C02PL04HG8WP from computer room
- 19) CF215 - Apple Mac book S/N C023QZPAGTEL from north Bedroom
- 20) CF216 - Apple iPhone IMEI: 352068066741902 from north bedroom
- 21) CF217 - iPhone IMEI: 354454066010514 from master bedroom
- 22) CF218 - iPad A1599 S/N F4KNF0LJG5V6 from north bedroom
- 23) CF219 - Camera bag SD Cards from north bedroom
- 24) JN6 - \$223 US Currency from master bedroom floor in envelope
- 25) JN7 - \$64 US Currency from garage safe
- 26) JN8 - \$108 US Currency from box in computer room
- 27) JN9 - \$231 US Currency from plastic drawer money clip in computer room
- 28) JN10 - \$230 US Currency from wallet in computer room

ADDITIONAL INVENTORY LIST ATTACHED: YES ( ) NO (X)

and I, Detective Joseph Armstrong, the officer by whom this warrant was executed, do swear that the above and foregoing inventory contains a true and detailed account of all property taken by me on said warrant and that said inventory was made publicly (from whose possession it was taken by me, the applicant for said warrant.)

Dated this 20<sup>th</sup> day of June, 2018.

A handwritten signature in black ink, appearing to read "J. Armstrong", written over a horizontal line.

Detective Joseph Armstrong

TCSO CASE # 18-07921(b)

1

Tulare County Superior Court  
Visalia Division  
221 S Mooney Blvd, Rm 124  
Visalia, CA 93291

Receipt No: 1165615T.1  
Payor: Hammer Schmidt,  
Date: 08/22/2018  
Time: 3:13 PM

ACCT-JUN18

Miscellaneous Fees

Copy Fees 3.50

Total: 3.50

Credit Card External 3.60

authorization id:

111658/79986050

jdimas Total Paid: 3.50

Change: 0.00

Balance after payment: 0.00

# Attachment 4

TULARE COUNTY SHERIFF'S DEPARTMENT

CRIME REPORT     INCIDENT REPORT     WARRANT

CASE NUMBER  
18-00007921 025

STATISTICAL CATEGORY  
 AG CRIME     NARCOTICS     GANG     HATE CRIME     DOMESTIC     JUVENILE     CORRECTIONS     OTHER

SECTION    DEFINITION    FEL / MISD    TYPE

LOCATION OF OCCURRENCE    BEAT  
20B    PROPERTY LOSS & PROPERTY DAMAGE

DATE OCC. FROM: TO:    TIME OCC. FROM: TO:    DAY OCC.    DATE / TIME DISP.    TIME ARR.    TIME COMP.  
08/26/2019 09:30    09:30    16:00

V I C  
CODE    NAME (LAST, FIRST, MIDDLE) FIRM IF BUSINESS    CODE    NAME (LAST, FIRST, MIDDLE) FIRM IF BUSINESS

CODE    NAME (LAST, FIRST, MIDDLE) FIRM IF BUSINESS    CODE    NAME (LAST, FIRST, MIDDLE) FIRM IF BUSINESS

W I T  
CODE    NAME (LAST, FIRST, MIDDLE) FIRM IF BUSINESS    CODE    NAME (LAST, FIRST, MIDDLE) FIRM IF BUSINESS

CODE    NAME (LAST, FIRST, MIDDLE) FIRM IF BUSINESS    CODE    NAME (LAST, FIRST, MIDDLE) FIRM IF BUSINESS

S U S P E C T  
CODE    NAME (LAST, FIRST, MIDDLE)    AKA'S    SEX    RACE

HGT.    WGT.    EYES    HAIR    HAIR STYLE    DATE OF BIRTH    DL / SS NUMBER    ARR / CITE

ADDRESS / POSSIBLE LOCATION    RESIDENCE PHONE

CODE    NAME (LAST, FIRST, MIDDLE)    AKA'S    SEX    RACE

HGT.    WGT.    EYES    HAIR    HAIR STYLE    DATE OF BIRTH    DL / SS NUMBER    ARR / CITE

ADDRESS / POSSIBLE LOCATION    RESIDENCE PHONE

V E H I C L E  
SUSPECT VEHICLE    YEAR    MAKE    MODEL    COLOR    STYLE    LICENSE    STATE

NAME OF R / O    SUS    ADDRESS OF R / O    SUS

OTHER VEHICLE INFORMATION

ODOR OF ALCOHOL    ABLE TO CARE FOR SELF    SPEECH    CLOTHING    BALANCE    ATTITUDE

YES    NO    YES    NO    [ ] NORMAL [ ] SLURRED [ ] INCOHERENT    [ ] NORMAL [ ] SOILED [ ] DISARRANGED    [ ] GOOD [ ] POOR [ ] UNSTEADY    [ ] COOPERATIVE [ ] ANTAGONISTIC [ ] ANGRY

NARRATIVE  
 1 - On 08/26/2019 I was briefed on this case by Sgt J Armstrong and was advised he had  
 2 - been contacted by Casey Tharp regarding a 401K retirement account which the suspect  
 3 - in this case, Donald Clinton, still had with the company EM Tharp Inc. I was advised  
 4 - someone had contacted EM Tharp Inc wanting to make a withdrawal from Clintons  
 5 - retirement account on his behalf. Based on the circumstances regarding this case,  
 6 - personnel from EM Tharp subsequently contacted the Sheriff's Department.

CASE STATUS     ACTIVE     INACTIVE     CLOSED     UNFOUNDED    NON-PROS    Y -

NEWS REL    Y -     COPIES TO:    DET    PAT     D/A    JUV    CPS    OTHER    SUP-RESP    Y -     LAB RESP    Y -     DET RESP    Y -

REPORTING DEPUTY    ID #    DATE / TIME    REVIEWED BY:    DATE  
 MCLEAN, BRADLEY    M2851    08/26/2019    SANDOVAL, MARIO-S7095    09/10/2019

**CRIME:**

**PAGE 2**

7 -

8 -

9 -

10 - After being briefed by Sgt Armstrong, at approximately 1045 hours, I subsequently  
11 - responded to EM Tharp Inc located at 15243 Rd 192, Porterville, CA and met with Casey  
12 - Tharp. Present during part of the meeting was Audrey Della, Payroll Clerk for EM  
13 - Tharp Inc. While meeting with them, I was advised Clinton still had a 401K retirement  
14 - account with EM Tharp Inc which had a balance of \$74,952.43. I was advised the  
15 - account, although it is through EM Tharp, said retirement funds are held through  
16 - Nationwide Bank. I was advised the account is made from employee contributions, a  
17 - percentage rate based on the employees "gross" income at a bi-weekly rate. I was  
18 - advised the "gross" rate would be Clinton's salary, not any additional money which he  
19 - was allegedly embezzling from January 2010 to June 2018. I was also informed that the  
20 - "employee contribution" amount that is deposited into the employee's 401k plan is a  
21 - preset percentage of their gross wage. Said percentage is withheld from the  
22 - employee's bi-weekly check and directly deposited into the 401k plan.

23 -

24 -

25 -

26 - At approximately 1145 hours, I received a copy of the employee contributions to  
27 - Clinton's 401k plan. Below is the information I obtained from Audrey Della in year to  
28 - date totals:

**REPORTING DEPUTY:**  
MCLEAN, BRADLEY-M2851  
**DATE/TIME:** 06/15/2018

**REVIEWED BY:**  
SANDOVAL, MARIO-S7095

**YULARE COUNTY SHERIFF'S DEPARTMENT**  
**CONTINUATION REPORT - 5400**

**CASE NUMBER**  
18-00007921 025

**CRIME:**

**PAGE 3**

29 -

30 -

31 -

32 - 12/20/2009 - 12/18/2010 Gross pay \$86,150.40, Employee contribution @ 2% = \$1,538.49.

33 -

34 - 12/19/2010 - 12/17/2011 Gross pay \$106,803.36, Employee Contribution @ 2% =

35 - \$1,600.04.

36 -

37 - 12/18/2011 - 12/15/2012 Gross pay \$85,590.90, Employee contribution @ 2% = \$1,588.79.

38 -

39 - 12/16/2012 - 12/14/2013 Gross pay \$79,027.00, Employee contribution @ 2% = \$1,580.54.

40 -

41 - 12/15/2013 - 12/13/2014 Gross pay \$89,028.55, Employee contribution @ 3% = \$1,971.06.

42 -

43 - 12/14/2014 - 12/26/2015 Gross pay \$102,876.25, Employee contribution @ 5% =

44 - \$4,382.05.

45 -

46 - 12/27/2015 - 12/30/2016 Gross pay \$99,030.10, Employee contribution @ 5% = \$4,951.44.

47 -

48 - 12/25/2016 - 12/23/2017 Gross pay \$99,030.10, Employee contribution @ 6% = \$5,446.61.

49 -

50 - 12/24/2017 - 12/31/2018 Gross pay \$47,784.29, Employee contribution @ 6% = \$2,742.36.

**REPORTING DEPUTY:**

MCLEAN, BRADLEY-M2851

**DATE/TIME:** 06/15/2018

**REVIEWED BY:**

SANDOVAL, MARIO-S7095

CRIME:

PAGE 4

51 -

52 -

53 -

54 - While reviewing the above data, I observed the gross income for Clinton to vary from

55 - year to year, no two years were the same. I subsequently contacted Audrey and

56 - inquired about this. Audrey advised she would need to research the gross pay and see

57 - why the variance.

58 -

59 -

60 -

61 -

62 - At approximately 1500 hours I spoke with Audrey who advised Clinton's gross pay

63 - varied year to year due to other payments which he, Don Clinton, gave himself due to

64 - his position as Controller/Chief Financial Officer (CFO) of his paychecks. Audrey

65 - advised while reviewing the years in question (2010 - 2018) Clinton paid himself

66 - additional money which increased his "gross" salary. Below is a breakdown of the year

67 - end totals, part of which were fraudulently obtained which increased his gross

68 - salary, therefore fraudulently increasing the "employee contributions" to his 401K

69 - account.

70 -

71 -

72 -

REPORTING DEPUTY:

MCLEAN, BRADLEY-M2851

DATE/TIME: 06/15/2018

REVIEWED BY:

SANDOVAL, MARIO-S7095

**CRIME:**

73 - 2010: Regular salary: \$78,458.40, vacation pay of \$7,692.00. Total gross pay used

74 - when calculating employee contributions was \$86,150.40. Actual gross pay/salary

75 - should have only been \$78,458.40.

76 -

77 -

78 -

79 - 2011: Regular salary: \$79,996.80, a "miscellaneous" payment for \$6,153.60, vacation

80 - pay of \$20,652.96. Total gross pay used when calculating employee contributions was

81 - \$106,803.63. Actual gross pay should have been \$79,996.80.

82 -

83 -

1 -

85 - 2012: Regular salary: \$79,996.80, vacation pay of \$6,153.60. Total gross pay used

86 - when calculating employee contributions was \$85,590.90. Actual gross pay/salary

87 - should have only been \$79,996.80.

88 -

89 -

90 -

91 - Audrey advised for these years, 2010 - 2012, there should have been no vacation

92 - payments since Clinton's position with EM Tharp was paid salary, therefore vacation

93 - "pay" was included into his regular salary. Audrey advised Clinton would have changed

94 - his check to include vacation pay without proper authorization. She advised she was

**REPORTING DEPUTY:**  
MCLEAN, BRADLEY-M2851  
**DATE/TIME:** 06/15/2018

**REVIEWED BY:**  
SANDOVAL, MARIO-S7095



**CRIME:**

**PAGE 6**

95 - not sure what the "miscellaneous" payment for \$6,153.60 in 2011 would have been but

96 - believed that was a payment done fraudulently as well. There were no additional pays

97 - to Clinton similar to years 2010 through 2012 for years 2013 through 2017.

98 -

99 -

100 -

101 - 2018: Regular salary: \$46,346.11, vacation pay \$1,923.08. Total gross pay used when

102 - calculating employee contributions was \$47,784.29. Actual gross pay/salary should

103 - have only been \$46,346.11.

104 -

105 -

106 -

107 - It was determined from the years of 2010 - 2018, Clinton unlawfully gave himself

108 - "miscellaneous" payments totaling \$6,153.60 and vacation pay which totaled

109 - \$36,421.64. A combined \$42,575.24 was added to Clintons gross pay/salary over the

110 - years, which increased his employee contributions to his 401K retirement plan.

111 -

112 -

113 -

114 -

115 - I subsequently completed a 3 day hold for Clinton's 401K account and submitted it to

116 - EM Tharp Inc later this same say, 08/26/2019. I gave a copy of said hold to Audrey,

**REPORTING DEPUTY:**  
MCLEAN,BRADLEY-M2851  
**DATE/TIME:** 06/15/2018

**REVIEWED BY:**  
SANDOVAL,MARIO-S7095

**CRIME:**

**PAGE 7**

117 - who in turn forwarded the hold to their Nationwide representative, Nate Sepetauc, and  
118 - the retirement plan consultants Janet January and Mel Hill. All persons advised via  
119 - email they received the hold.

120 -

121 -

122 -

123 -

124 - On 08/27/2019 I authored a search warrant for the funds in Clinton's 401K plan with  
125 - EM Tharp Inc. After preparing the search warrant, it was presented to the Honorable  
126 - Judge B Hillman. After reviewing the warrant and finding probable cause, the warrant  
127 - was granted at 1154 hours on 08/27/2019.

128 -

129 -

130 -

131 -

132 - I responded to EM Tharp Inc a short time later and served the warrant with Audrey. I  
133 - informed her that per the request granted in the warrant, the funds in said account  
134 - be frozen and held in an interest bearing account until said funds are released by  
135 - the appropriate party as directed through the Tulare County Superior Court via the  
136 - Tulare County District Attorney's Office. I also met with Casey Tharp and advised him  
137 - of the update and that the funds in Clinton's account are to be held in their  
138 - possession until the case is received by the D.A.'s Office.

**REPORTING DEPUTY:**  
MCLEAN, BRADLEY-M2851  
**DATE/TIME:** 06/15/2018

**REVIEWED BY:**  
SANDOVAL, MARIO-S7095

**FLARE COUNTY SHERIFF'S DEPARTMENT**  
**CONTINUATION REPORT - 5400**

**CASE NUMBER**  
18-00007921 025

**CRIME:**

**PAGE 8**

139 -

140 -

141 -

142 -

143 - The 3-day hold and a copy of the search warrant have been attached to this report for

144 - review.

145 -

146 -

147 -

148 -

149 - Case status: Active; forward to the D.A's Office for review.

150 -

151 -

152 -

153 -

154 -

155 -

156 -

157 -

158 -

159 -

160 -

**REPORTING DEPUTY:**  
MCLEAN, BRADLEY-M2851  
**DATE/TIME:** 06/15/2018

**REVIEWED BY:**  
SANDOVAL, MARIO-S7095

# Attachment 5



HAMMERSCHMIDT  
LAW CORPORATION

2445 Capitol Street, Suite 150  
Fresno, California 93721

Telephone: (559) 233-5333  
Facsimile: (559) 233-4333

Jeffrey T. Hammerschmidt\*  
Kevin P. Rooney, Of Counsel

\*Certified Criminal Law Specialist,  
California State Bar Board of Legal Specialization

September 24, 2019

DDA Paula Clark  
Tulare County District Attorney's Office  
221 South Mooney Blvd., Room 224  
Visalia, CA 93291

RE: Donald Clinton  
August 27, 2019 search warrant for 401k funds

Dear Ms. Clark:

Enclosed is a search warrant authorized on August 27, 2019. (I emailed you this same search warrant on September 20.) Pursuant to this warrant, the Tulare County Sherriff's Office seized and continues to hold \$74,952.43 constituting all of Mr. Clinton's 401k contributions.

I do not believe that law enforcement is entitled to hold Mr. Clinton's 401k funds pursuant to this warrant. The only basis for holding the funds at this time is that they are stolen or embezzled property. This is the exact issue that was extensively litigated earlier this year between your office and Dr. Benzeevi in connection with the Tulare Regional Medical Center investigation. The government is not entitled to hold these funds as substitute assets for other funds which you may contend were stolen or embezzled.

Even accepting the underlying factual premises in the 'Clinton 401k search warrant,' there is no justification for the continued holding of Mr. Clinton's funds because those funds cannot be characterized as stolen property. The search warrant acknowledges that all the 401k contributions were made by Mr. Clinton. At page 4, the affidavit states, "I was advised the account is made from employee contributions". No money came from any source other than Mr. Clinton – there was no employer contribution. There is no contention that the 401k contributions exceeded Mr. Clinton's legitimate earnings. Simply put, the 401k funds came from Mr. Clinton's earnings, were not stolen or embezzled, and he is entitled to their immediate return.

The search warrant affidavit asserts that the contributions were 'fraudulent' because Mr. Clinton inflated his gross pay. (Affidavit p. 4-5). Assuming that assertion is factually and legally correct<sup>1</sup>, a grossly disproportionate amount of money was seized and is being held.

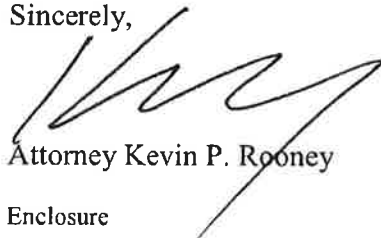
The affidavit, p. 4-5, indicates that between 2010-2018 Mr. Clinton's gross pay was inflated by a total amount of \$42,575.24. The alleged fraud and embezzlement concerns employee contributions to the 401k based on that inflated gross pay. The employee contributions ranged between 2-6% of gross pay. Taking the highest percentage contribution from any year (6%) and applying that percentage to the total amount of alleged gross pay inflation (\$42,575.24), would produce the highest estimate of the inflated contributions; and 6% of \$42,575.24 amounts to only \$2,555.

**Based on the affidavit, at the very most, \$2,555 of Mr. Clinton's contributions of his own money to his 401k could be questioned. Instead, \$74,952.43 was seized and continues to be held.**

The affidavit, p. 4, acknowledges that the account held \$74,952.43. All those funds have been seized and continue to be held. The continued withholding of Mr. Clinton's funds is without any legal basis and violates due process.

Please return Mr. Clinton's funds immediately. Due to overseas travel, I will be unavailable until October 10. With regard to logistical arrangements for returning the funds, Mr. Hammerschmidt will be able to assist. I hope this matter is resolved before my return.

Sincerely,



Attorney Kevin P. Rooney

Enclosure

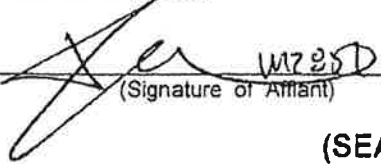
---

<sup>1</sup> According to the affidavit, Mr. Clinton contributed varying percentages of his gross pay. (Affidavit p. 4) The pre-set percentages ranged from 2-6%. Nothing in the affidavit indicates that Mr. Clinton was limited to a particular percentage – in other words if he had wanted to contribute a specific dollar amount in a given year he could have simply adjusted the percentage and the dollar amount would be unchanged. Consequently, the designated percentages are immaterial.

STATE OF CALIFORNIA - COUNTY OF TULARE  
SEARCH WARRANT AND AFFIDAVIT

(AFFIDAVIT)

Your Affiant, **Detective Brad McLean**, swears under oath that the facts expressed by him/her in the attached and incorporated **Statement of Probable Cause** are true and that based thereon he/she has probable cause to believe and does believe that the property described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

  
(Signature of Affiant)

HOBBS SEALING REQUESTED:  YES  NO  
NIGHT SEARCH REQUESTED:  YES  NO

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY PEACE OFFICER IN THE COUNTY OF TULARE: proof by affidavit having been made before me by **Detective Brad McLean** that there is probable cause to believe that the property described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated by "X"(s) in that it:

- Was stolen or embezzled
- Was used as the means of committing a felony.
- Is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
- Tends to show that a felony has been committed or that a particular person has committed a felony.

YOU ARE THEREFORE COMMANDED TO SEARCH:

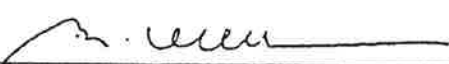
1. EM Tharp Inc located at 15243 Road 291, Porterville, County of Tulare, State of California. (Further described as in attachment "A", hereby incorporated by reference)

FOR THE FOLLOWING EVIDENCE:

1. 401K plan / retirement account held with EM Tharp through Nationwide Bank for Donald Clinton with an associated account number of 567-13-4959. (Further described as in attachment "B", hereby incorporated by reference)

**EVIDENCE DESTRUCTION:** The court orders that any items seized during the lawful service of this search warrant be disposed in accordance with the law, by the California Department of Justice, upon adjudication of the case. The officers serving the search warrant are also hereby authorized, without necessity of further court order, to return seized items to any known victim(s) if such items have been photographically documented.

And To Seize It If Found and bring it forthwith before me, or this Court, or retain in your custody according to Section 1536 of the California Penal Code. This Search Warrant and incorporated Affidavit was sworn to and subscribed before me this 27<sup>th</sup> day of August, 2019 at 11:54 A.M. P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

  
(Signature of Magistrate)

HOBBS SEALING APPROVED:  YES  NO  
NIGHT SEARCH APPROVED:  YES  NO

Judge of the Superior Court of California, County of Tulare.



STATE OF CALIFORNIA - COUNTY OF TULARE  
SEARCH WARRANT AND AFFIDAVIT

SEP 09 2019

STEPHANIE CAMERON, CLERK

014860

(AFFIDAVIT)

Your Affiant, Detective Brad McLean, swears under oath that the facts expressed by him/her in the attached and incorporated Statement of Probable Cause are true and that based thereon he/she has probable cause to believe and does believe that the property described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

HOBBS SEALING REQUESTED:  YES  NO  
NIGHT SEARCH REQUESTED:  YES  NO

*[Signature]*  
(Signature of Affiant)

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY PEACE OFFICER IN THE COUNTY OF TULARE: proof by affidavit having been made before me by Detective Brad McLean that there is probable cause to believe that the property described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated by "X"(s) in that it:

- Was stolen or embezzled
- Was used as the means of committing a felony.
- Is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
- Tends to show that a felony has been committed or that a particular person has committed a felony.

YOU ARE THEREFORE COMMANDED TO SEARCH:

1. EM Tharp Inc located at 15243 Road 291, Porterville, County of Tulare, State of California. (Further described as in attachment "A", hereby incorporated by reference)

FOR THE FOLLOWING EVIDENCE:

1. 401K plan / retirement account held with EM Tharp through Nationwide Bank for Donald Clinton with an associated account number of 567-13-4959. (Further described as in attachment "B", hereby incorporated by reference)

**EVIDENCE DESTRUCTION:** The court orders that any items seized during the lawful service of this search warrant be disposed in accordance with the law, by the California Department of Justice, upon adjudication of the case. The officers serving the search warrant are also hereby authorized, without necessity of further court order, to return seized items to any known victim(s) if such items have been photographically documented.

And To Seize It If Found and bring it forthwith before me, or this Court, or retain in your custody according to Section 1536 of the California Penal Code. This Search Warrant and incorporated Affidavit was sworn to and subscribed before me this 27<sup>th</sup> day of August, 2019 at 11:54 A.M. P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

*[Signature]*  
(Signature of Magistrate)

HOBBS SEALING APPROVED:  YES  NO  
NIGHT SEARCH APPROVED:  YES  NO

BRET HILLMAN



Judge of the Superior Court of California, County of Tulare.



**STATE OF CALIFORNIA, COUNTY OF TULARE**

**Attachment "A"**

**YOU ARE THEREFORE COMMANDED TO SEARCH:**

**Property:**

EM Tharp Inc located at 15243 Road 291, Porterville, County of Tulare, State of California.

**Attachment "B"**

**FOR THE FOLLOWING EVIDENCE:**

**Seizure:**

To identify all proceeds, any and all money on deposit or present in the following account(s): a 401K plan / retirement account held with EM Tharp through Nationwide Bank for Donald Clinton with an associated account number of 567-13-4959. Said account in care of EM Tharp Inc located at 15243 Rd 192, Porterville, County of Tulare, State of California.

If any proceeds, cash, negotiable instruments, or money is on deposit or present in the account(s), it may be frozen and held by the Custodian of Records/Payroll Clerk, EM Tharp Inc, pursuant PC1409 (Property in custody of Magistrate) and PC 1410 (Return to owner by court) and held in an interest bearing account until those funds have been released to the appropriate party as directed by the Tulare County Superior Court. Notification of release will be through the investigating agency, the Tulare County District Attorney's Office, Bureau of Investigations.

**STATE OF CALIFORNIA, COUNTY OF TULARE**  
**STATEMENT OF OFFICER'S EXPERTISE**

Your affiant, Brad McLean, states that he is a duly qualified peace officer with the Tulare County Sheriff's Office and has been since his appointment in November 2006. His career began assigned to the Pre-Trial Adult Facility (APTF) from 2006 through 2008. Prior to working at APTF, your affiant completed a CORE Training academy which included narcotic investigations and recognition of persons who may be under the influence of controlled substances. He was transferred to the Porterville Substation as the Duty Officer from 2008 to 2009. His duties included handling counter reports and booking of all subjects arrested in south county. In July 2009, your affiant began working patrol assignments at the Porterville Substation. He was transferred to the TCSO Narcotics Task Force as a Detective in 2014. From August 2017 to January 2019, the affiant was working as a Task Force Agent on the High Impact Investigation Team (HIIT) which is a Central California High Intensity Drug Trafficking Area (HIDTA) Team operating under the supervision of the Department of Justice. The affiant is currently assigned to the Agriculture Crimes Unit.

Your affiant completed a 760+ hour Basic Police Academy at the College of the Sequoias in Visalia, Ca. in July of 2009. During the POST academy, the affiant studied crimes against persons which includes but is not limited to theft, vandalism, child abuse, domestic violence, embezzlement, homicide and kidnapping. During your affiant's tenure as a law enforcement officer, and also in connection with your affiant's current/previous duties, he has expended his exposure to such cases by handling numerous investigations and arresting people for various crimes similar to those listed above. In doing so, your affiant has become acquainted with numerous subjects who were under the influence and/or engaged activities involving controlled substances.

The affiant has also attended other trainings which include but are not limited to: a 40 hours Field Officer Training course and has trained numerous other individuals on a variety of investigations such as but not limited to thefts, vandalisms, embezzlement, domestic violence and child abuse. He has also completed a 40 hours Officer Safety & Tactics course (CSTI).

He has attended four (4) 32 hour California Narcotics Officers Association (CNOA) training in November of 2014, 2015, 2017 and 2018. The training included but was not limited to the use/manufacturing of methamphetamine and other illegal controlled substances, the transportation and sales thereof. Working large scale and long term investigations into Drug Trafficking Organizations (DTO's). Such training aides included but were not limited to working undercover, handling confidential informants, financial backgrounds and associates/co-conspirators. The affiant has also attended a two week POST certified Narcotic Investigators course in February of 2015 which provided in depth training that included but was not limited to: illegal narcotics such as manufacturing, packaging, transportation, sale of illegal and controlled substances, use and under the influence of such substances, surveillance techniques, counter surveillance and various interdiction and investigation methods. The affiant has attended and completed an 80 hour BASIC SWAT School which included training on: structure fortification, surveillance, counter-surveillance and numerous tactical considerations.

During the affiant's assignment to the HIIT Team with California DOJ-HIDTA, he has conducted and participated in large scale narcotics investigations which involved large quantity sales and transportation cases of methamphetamine, heroin and cocaine. The Affiant is certified by the California State Attorney General's Office in the practical, technical and legal aspects of court ordered wiretaps as authorized in Section 629.50 et seq. of the California Penal Code. He has participated in such state wire-tap investigations regarding narcotic investigations in the Fresno, Kings and Tulare County areas. He has also participated in a state wire-tap homicide investigation in Fresno County.

**STATE OF CALIFORNIA, COUNTY OF TULARE  
STATEMENT OF PROBABLE CAUSE**

Your Affiant states that the facts in support of the issuance of the search warrant are as follows:

On 08/26/2019 I was briefed on this case by Sgt J Armstrong and was advised he had been contacted by Casey Tharp regarding a 401K retirement account which the suspect in this case, Donald Clinton, still had with the company EM Tharp Inc. I was advised someone had contacted EM Tharp Inc wanting to make a withdrawal from Clintons retirement account on his behalf. Based on the circumstances regarding this case, personnel from EM Tharp subsequently contacted the Sheriff's Department.

After being briefed by Sgt Armstrong, at approximately 1045 hours, I subsequently responded to EM Tharp Inc located at 15243 Rd 192, Porterville, CA and met with Casey Tharp. Present during part of the meeting was Audrey Della, Payroll Clerk for EM Tharp Inc. While meeting with them, I was advised Clinton still had a 401K retirement account which EM Tharp Inc which had a balance of \$74,952.43. I was advised the account, although it is through EM Tharp, said retirement funds are held through Nationwide Bank. I was advised the account is made from employee contributions, a percentage rate based on the employees "gross" income at a bi-weekly rate. I was advised the "gross" rate would be Clinton's salary, not any additional money which he was allegedly embezzling from January 2010 to June 2018. I was also informed that the "employee contribution" amount that is deposited into the employee's 401k plan is a preset percentage of their gross wage. Said percentage is withheld from the employee's bi-weekly check and directly deposited into the 401k plan.

At approximately 1145 hours, I received a copy of the employee contributions to Clinton's 401k plan. Below is the information I obtained from Audrey Della in year to date totals:

12/20/2009 – 12/18/2010 Gross pay \$86,150.40, Employee contribution @ 2% = \$1,538.49.  
12/19/2010 – 12/17/2011 Gross pay \$106,803.36, Employee Contribution @ 2% = \$1,600.04.  
12/18/2011 – 12/15/2012 Gross pay \$85,590.90, Employee contribution @ 2% = \$1,588.79.  
12/16/2012 – 12/14/2013 Gross pay \$79,027.00, Employee contribution @ 2% = \$1,580.54.  
12/15/2013 – 12/13/2014 Gross pay \$89,028.55, Employee contribution @ 3% = \$1,971.06.  
12/14/2014 – 12/26/2015 Gross pay \$102,876.25, Employee contribution @ 5% = \$4,382.05.  
12/27/2015 – 12/30/2016 Gross pay \$99,030.10, Employee contribution @ 5% = \$4,951.44.  
12/25/2016 – 12/23/2017 Gross pay \$99,030.10, Employee contribution @ 6% = \$5,446.61.  
12/24/2017 – 12/31/2018 Gross pay \$47,784.29, Employee contribution @ 6% = \$2,742.36.

While reviewing the above data, I observed the gross income for Clintons to vary from year to year, no two years where the same. I subsequently contacted Audrey and inquired about this. Audrey advised she would need to research the gross pay and see why the variance.

At approximately 1500 hours I spoke with Audrey who advised Clinton's gross pay varied year to year due to other payments which he, Don Clinton, gave himself due to his position as Controller/Chief Financial Officer (CFO) of his paychecks. Audrey advised while reviewing the years in question (2010 – 2018) Clinton paid himself additional money which increased his "gross" salary. Below is a breakdown of the year end totals, part of which were fraudulently obtained which increased his gross salary, ergo fraudulently increasing the "employee contributions" to his 401K account.

2010: Regular salary: \$78,458.40, vacation pay of \$7,692.00. Total gross pay used when calculating employee contributions was \$86,150.40. Actual gross pay/salary should have only been \$78,458.40.

2011: Regular salary: \$79,996.80, a "miscellaneous" payment for \$6,153.60, vacation pay, of \$20,652.96. Total gross pay used when calculating employee contributions was \$106,803.63. Actual gross pay should have been \$79,996.80.

2012: Regular salary: \$79,996.80, vacation pay of \$6,153.60. Total gross pay used when calculating employee contributions was \$85,590.90. Actual gross pay/salary should have only been \$79,996.80.

Audrey advised for these years, 2010 – 2012, there should have been no vacation payments since Clinton's position with EM Tharp was paid salary, therefore vacation "pay" was included into his regular salary. Audrey advised Clinton would have changed his check to include vacation pay without proper authorization. She advised she was not sure what the "miscellaneous" payment for \$6,153.60 in 2011 would have been but believed that was a payment done fraudulently as well. There were no additional pays to Clinton similar to years 2010 through 2012 for years 2013 through 2017.

2018: Regular salary: \$46,346.11, vacation pay \$1,923.08. Total gross pay used when calculating employee contributions was \$47,784.29. Actual gross pay/salary should have only been \$46,346.11.

It was determined from the years of 2010 – 2018, Clinton unlawfully gave himself "miscellaneous" payments totally \$6,153.60 and vacation pay which totaled \$36,421.64. A combined \$42,575.24 was added to Clintons gross pay/salary over the years, which increased his employee contributions to his 401K retirement plan.

It is the affiant's opinion based on the information provided to me that the employee contribution amount placed into Clinton's 401K plan is calculated on an inflated gross amount due to Clinton increasing his pay throughout the year with "miscellaneous" and "vacation pay" payments as indicated above. Since the employee contribution amount is based on fraudulent amounts, the percentage deposited into the 401K plan is unlawfully obtained and funds of embezzlement, pursuant California Penal Code 503.

Due to the information outlined above, I request authorization to seize the funds placed in Donald Clinton's 401K retirement plan through Nationwide Bank through EM Tharp Inc as it is appeared to be the funds of illegally obtained money.

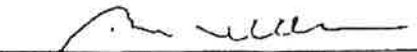
#### CONCLUSION

WHEREFORE, I request that a Search Warrant be issued based upon the aforementioned facts, for the search of the residence(s) described in Attachment A; good cause being shown thereof, and the same be brought before this Magistrate or retained subject to the order of the court, or any court in which the offense(s) in respect to which the property of things taken, triable, pursuant to Section 1536 of the California Penal Code.

I swear, under penalty of perjury, that the foregoing information is true and correct, to the best of my knowledge, information and belief.

 11235T  August, 20 19 at 11:54 AM/PM  
(Signature of Affiant)

**BRET HILLMAN**

 27<sup>th</sup> day of August, 20 19 at 11:54 AM/PM  
(Signature of Magistrate)

---014860

STATE OF CALIFORNIA – COUNTY OF TULARE

SEARCH WARRANT RETURN – PROPERTY SEIZURE INVENTORY  
TCSO # 18-7921

I, Brad McLean, Deputy Sheriff II hereby certify that I received the within warrant on the 27<sup>th</sup> day of August, 2019, and I, Brad McLean, under its authority, on the 27<sup>th</sup> day of August, 2019, diligently served the warrant on the premises as follows, to wit:

Search Warrant served at:

- A) 15243 Road 192, Porterville CA

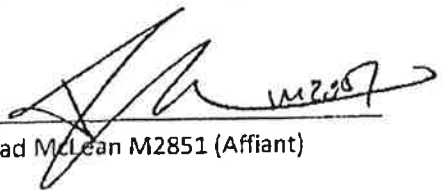
And per the authority of said warrant I seized the following items to wit:

- A) Froze funds in Don Clinton's 401K retirement plan with EM Tharp Inc.

INVENTORY LIST ATTACHED: YES ( ) NO ( X )

And I, Brad McLean, the officer by whom this warrant was executed, do swear that the above and foregoing inventory contains a true and detailed account of all property taken by the Deputy on said warrant.

Dated this 9<sup>th</sup> day of September, 2019.

  
\_\_\_\_\_  
Brad McLean M2851 (Affiant)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF TULARE

I am employed in the County of Fresno, State of California. I am over the age of 18 years and not a party to the within action. My business address is 2445 Capitol Street, Suite 215, Fresno, CA 93721. I am employed in the office of a member of the Bar of this Court, at whose direction I made this service.

In the matter of *People v. Donald Clinton* – Case No.: PCF411566

On **June 28, 2022**, I served the foregoing documents described as **DEFENDANT DONALD CLINTON'S MOTION TO COMPEL PRODUCTION OF DISCOVERY MATERIALS IN SUPPORT OF A SELECTIVE PROSECUTION/SELECTIVE ENFORCEMENT MOTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** by placing true copies thereof as follows:

**Tulare County District Attorney Office  
Deputy District Attorney Kirk Davis  
16 E. Olive Ave.  
Porterville, CA 93257  
KDDavis@tularecounty.ca.gov ^^^**

BY HAND DELIVERY TO COURTHOUSE IN-BOX(ES): I caused said true copies to be placed in the corresponding inboxes at the Fresno Superior Court.

BY MAIL AS FOLLOWS: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Fresno, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if post cancellation date or postage meter date is more than one day after date of deposit for mailing on affidavit.

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the offices of the addressee listed above.

BY EMAIL: In addition to the above service by mail, hand delivery or Federal Express, I caused said document(s) to be transmitted by email at approximately 4:45 a.m./**p.m.** to the addressee(s) marked with a ^^^.

Executed on **June 28, 2022**, at Fresno, California.

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

  
\_\_\_\_\_  
**Lisa Ingram**