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| Police Technical |
| CELLULAR PHONE MODEL AFFIDAVIT |
| DDA Mike Galli, Santa Clara County |

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# About the Author:

Mike Galli, DDA for the County of Santa Clara (CA), wrote the Search Warrant Law & Practice Manual the California District Attorney’s Association (CDAA) in 2009; currently in the 3rd Edition. It is approximately 632 pages long, and contains 200 pages of sample search warrants. He has taught search and seizure law for over 28 years to law enforcement and deputy district attorney’s.

DDA Galli has made his template available to the law enforcement community via POLICE TECHNICAL. While specific to California and referencing California statute, the document may be modified and shared with other officers in your department.

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**Contact Information**Mike R. Galli, DDA

Office of the D.A., County of Santa Clara

70 W. Hedding Street

San Jose, CA 95110

(408) 792-2631

MGalli@da.sccgov.org

POLICE TECHNICAL

661 Poplar Street

Terre Haute, IN 47807

(812) 232-4200

[www.policetechnical.com](http://www.policetechnical.com)

info@policetechnical.com

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Adapted from:
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Rev.: 3 February 2014

**SW #: \_\_\_\_\_\_\_**

SUPERIOR COURT OF CALIFORNIA

**[INSERT COUNTY NAME, IN UPPERCASE, but not bold]** COUNTY JUDICIAL DISTRICT

**[INSERT LOCATION, IN UPPERCASE, but not bold]** FACILITY

STATE OF CALIFORNIA ) **AFFIDAVIT IN SUPPORT**

 : ss **OF SEARCH WARRANT**

COUNTY OF **[Insert County Name, in UPPERCASE, but not in bold]**)

Personally appeared before me this \_\_\_\_\_ **[Judge fills in day date]** day of \_\_\_\_\_ **[Affiant inserts month, but not in bold or uppercase]**, 20\_\_, **[Affiant inserts year, but not in bold or uppercase]** \_\_\_\_\_\_\_\_\_\_\_\_ **[INSERT AFFIANT’S NAME IN BOLD & UPPERCASE]** who, under penalty of perjury, says that there is just, probable and reasonable cause to believe, and that he\she **[Chose the pronoun that applies & delete the other one]** does believe, that there is now in the possession of [**INSERT NAME OF POLICE AGENCY IN BOLD & UPPERCASE**]**,** whose primary business address is [**INSERT STREET ADDRESS & CITY IN BOLD & UPPERCASE**]**, \_\_\_\_\_\_\_\_\_\_\_ COUNTY,** **CALIFORNIA,** [**insert either “a” or the actual number of cellular communication device(s)[[1]](#footnote-1) (e.g., “two”) to search if multiple communication device(s) involved, but not in bold or uppercase**], described as follows:

1. [**Insert, make, model and serial number of the cellular communication device(s) to be searched, in single space, but not in bold or uppercase**]

the following property and evidence that is lawfully seizable pursuant to Penal Code §1524 in that:

[ ]  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 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 California Penal Code §311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of California Penal Code §311.11, has occurred or is occurring.

and requests authority to search the above-described cellular communication device(s) for the following property and evidence:

1. The following items that may be located on and in the above-described cellular communication device(s):

A. Data that may identify the owner or user of the above-described cellular communication device(s);

B. Address books and calendars;

C. Audio and video clips related to the above-described criminal activity and further described in this affidavit in support of the search warrant, for the above-described item(s);

D. Call histories and call logs related to the above-described criminal activity and further described in this affidavit in support of the search warrant, for the above-described item(s);

E. Photographs and associated metadata[[2]](#footnote-2) related to the above-described criminal activity and further described in this affidavit in support of the search warrant, for the above-described item(s);

F. Text messages (SMS[[3]](#footnote-3)), multimedia messages (MMS[[4]](#footnote-4)), recorded messages and subscriber information modules [SIM cards[[5]](#footnote-5)] between \_\_\_\_\_\_\_\_\_\_\_ and co-conspirators involved in the above described criminal activity and further described in this affidavit in support of the search warrant, for the above described item(s);

G. E-mail messages and attachments, whether read or unread and related to the above-described criminal activity and further described in this affidavit in support of the search warrant, for the above-described item(s)

H Internet World Wide Web (WWW) browser files including, but not limited to, browser history, browser cache, stored cookies; browser favorites, auto-complete form history and stored passwords;

I. Global position system (GPS[[6]](#footnote-6)) data including, but not limited to coordinates, way points and tracks;

J. Documents and other text based files related to the above described criminal activity and further described in this affidavit in support of the search warrant, for the above described item(s);

2. With respect to the above items listed in #1 and its subsections above, the executing law enforcement officer(s) is\are authorized to view, photograph, record, copy, forensic image and conduct forensic analysis of any and all data, programs and applications on the above-described cellular communication device(s), as well as on any data storage devices and or mediums attached to those cellular communication device(s);

3. The executing law enforcement officer may enlist the aid of a law enforcement computer forensic laboratory in the searching, viewing, photographing, recording, copying, forensic imagining and analysis of any and all of the information described in item list #1 and its subsections above.

**Insert Affiant’s Expertise, but not in bold or uppercase.**

I also know from my training and experience that modern cellular communication devices very often possess data processing and data storage capabilities that were previously only found in computers. Cellular telephones, personal digital assistant (PDA) devices and “Smart Phones” are becoming more complex with each innovation and provide features and capabilities that were previously only found in computers. Most of these devices now provided Internet web browsers, instant messaging capabilities, chat programs, and even e-mail access capabilities. These devices are capable of storing address books and calendars containing a person’s personal and business contacts. They can also store audio and video clips, call histories, call logs, photographs, text and recorded messages sent and received and subscriber information. Many of these devices contain high resolution still and video cameras, and include Global Positioning System (GPS) functions that record data about the phone’s locations including tracks, ways points and even the coordinates where photographs were taken.

I know from my training and experience that criminals often take photographs of themselves with contraband such as large sums of money as well as narcotics and sometimes weapons and sometimes store these images on their cellular communication device(s), “Smart Phones” and PDA devices. I also know that criminals sometimes communicate with their co-conspirators by text messages and that some of these text messages can be found stored on these devices as well as other data storage devices and mediums attached to the cellular communication device, “Smart Phone” or PDA device. These mediums include, but are not limited to, secure digital (SD) cards, micro SD cards, memory sticks and other flash memory devices.[[7]](#footnote-7)

**Insert Probable Cause Section, but not in bold or uppercase.**

**(NOTE: This may be several paragraphs and pages in length.)**

Based on the above facts, which I swear under penalty of perjury are true and correct to the best of my knowledge and belief, I have reasonable cause to believe, and do believe, that evidence of the commissions of felonies, to wit: violation(s) of **CALIFORNIA [INSERT CODE § & NAME(S) OF FELONY(S) IN BOLD & UPPERCASE, e.g., HEALTH & SAFETY CODE §11351 (POSSESSION FOR SALE OF COCAINE) and 11352 (SALES OF COCAINE)] \_\_\_\_\_\_\_\_**, and property documenting the commission of said felonies, will be located on the above-described cellular communication device(s).

That based upon the above facts, I request that a daytime search warrant be issued with respect to the above cellular communication device(s) located at the above specified location and for the seizure of said property, and that the same be held under California Penal Code §1536.

I also request that upon adjudication of the case(s) against all defendant(s) in this action, including the resolution of any and all appeals, and the written concurrence of the [**Insert County name, but not in bold or uppercase]** \_\_\_\_\_\_\_\_ County District Attorney's Office, the property be disposed of in accordance with the procedures set forth in California Penal Code §§1407 to 1422, without the necessity of a further Court Order issued pursuant to California Penal Code §1536.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **[INSERT AFFIANT’S NAME]**

 AFFIANT

**HOBBS SEALING REQUESTED: YES [ ] NO [ ]**

**(People v. Hobbs (1994) 7 Cal.4th 948).**

**NIGHTTIME SERVICE REQUESTED: YES [ ] NO [ ]**

Subscribed and sworn to before me this \_\_\_\_\_ **[Judge fills in day date]** day of \_\_\_\_\_\_\_\_\_ **[Affiant inserts month, but not in bold or uppercase]** 20\_\_\_\_ **[Affiant inserts year, but not in bold]**.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 JUDGE OF THE SUPERIOR COURT

1. Cellular communication devices as used herein encompass devices that are primarily used for personal communications. These devices may include cell phones, PDAs, “Smart Phones” and other handheld data processing devices that connect to cellular communications networks, for the primary purpose of personal communications. What is not included are desktop and laptop computers. [↑](#footnote-ref-1)
2. Metadata is generally defined as data about data. It is stored within the data file itself, but is not normally seen when viewing the file. Metadata includes Exchangable Image File Format (EXIF) which is a specification for image file formats used by digital camera and includes specific information about the photograph. [↑](#footnote-ref-2)
3. Short Message Service (SMS) is the text communication service that allows the exchange of short text messages between mobile phone devices. [↑](#footnote-ref-3)
4. Multimedia Message Service (MMS) is a communication service that allows the exchange of messages that include multimedia content to and from mobile phones. [↑](#footnote-ref-4)
5. Subscriber Identity Modules, sometimes referred to as SIM cards, are portable memory chips often used in notebook computers and some models of mobile phones. SIM cards securely store the service-subscriber key used to identify subscribers. The SIM card allows users to change phones by simply removing the SIM card from one mobile phone and inserting it into another mobile phone or broadband telephony device. SIM cards store information used to authenticate and identify subscribers, including but not limited to the Service Provider Name, Service Dialing Numbers and Value Added Service applications. They can also be used to store personal address books and SMS data. [↑](#footnote-ref-5)
6. The Global Positioning System (GPS) is a satellite-based navigation system which provides location and time information. [↑](#footnote-ref-6)
7. Flash memory devices are data storage devices that use solid-state memory to store data. They are generally small in size (in some cases smaller than a fingernail) and designed to be easily removed and transported. They are typically powered by the electronic components they serve. Modern flash memory devices are capable of storing large amounts of information, such as hundreds of images or thousands of pages of text. [↑](#footnote-ref-7)