

SEALED

ORIGINAL FILED

MAR 18 2014

UNITED STATES DISTRICT COURT for the Eastern District of California

CLERK, U.S. DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA BY DEPUTY CLERK

United States of America v. DERIK CARSON KUMAGAI, and SAYKHAM SOMPHOUNE, a/k/a "Oat,"

Case No.

1:14 MJ 00050 SKO

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of October 2013 through March 2014 in the county of Fresno and elsewhere in the Eastern District of California, the defendant(s) violated:

Table with 2 columns: Code Section and Offense Description. Rows include 18 U.S.C. § 371, 18 U.S.C. §§ 666(a)(1)(B) & 2, 18 U.S.C. § 1951, 18 U.S.C. §§ 1951 & 2, Conspiracy, Federal Programs Bribery, Conspiracy to Commit Extortion Under Color of Official Right, and Attempted Extortion Under Color of Official Right.

This criminal complaint is based on these facts:

Set forth in attached Sealed Complaint and Affidavit of Ryan Jensen, and Attachment "A," all attached hereto and fully incorporated herein,

Continued on the attached sheet.

Complainant's signature

Ryan Jensen, Special Agent, DEA

Printed name and title

Sworn to before me and signed in my presence.

Date: March 17, 2014

Judge's signature

City and state: Fresno, California

Hon. Sheila K. Oberto, U.S. Magistrate Judge

Printed name and title

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United States Attorney  
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7 United States of America

8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 DERIK CARSON KUMAGAI, and  
SAYKHAM SOMPHOUNE,  
15 a/k/a "Oat,"  
16 Defendants.

CASE NO.  
**SEALED COMPLAINT AND  
AFFIDAVIT OF RYAN JENSEN**  
Violations:  
18 U.S.C. § 371 (Conspiracy)  
18 U.S.C. §§ 666(a)(1)(B) & 2 (Federal Programs  
Bribery)  
18 U.S.C. § 1951 (Conspiracy to Commit Extortion  
Under Color of Official Right)  
18 U.S.C. §§ 1951 & 2 (Attempted Extortion Under  
Color of Official Right)

18 Ryan Jensen, being duly sworn, deposes and says that he is a Special Agent with the Drug  
19 Enforcement Administration ("DEA") and charges against DERIK CARSON KUMAGAI  
20 ("KUMAGAI") and SAYKHAM SOMPHOUNE, a/k/a "Oat," ("SOMPHOUNE") as follows:

21 COUNT ONE  
22 [18 U.S.C. § 371 - Conspiracy]

23  
24 1. From in or around October 2013 through in or around March 2014, defendants KUMAGAI  
25 and SOMPHOUNE, and other persons known and unknown, did knowingly and willfully combine,  
26 conspire, confederate, and agree with each other and others known and unknown to commit federal  
27 programs bribery, in that KUMAGAI, a sworn officer and agent of the Fresno Police Department  
28 ("FPD"), and SOMPHOUNE, a co-conspirator, corruptly solicited, demanded, accepted, and agreed to

1 accept money and things of value from Person Y, intending to be influenced and rewarded in  
2 KUMAGAI's acts as a police detective of FPD, an agency of the City of Fresno, State of California, and  
3 the acts of other individuals known and unknown, which was a business, transaction, and series of  
4 transactions of FPD involving a thing of value of \$5,000 or more, in violation of Title 18, United States  
5 Code, Section 666(a)(1)(B).

6 2. It was a purpose of the conspiracy for KUMAGAI to enrich himself by corruptly accepting  
7 payments and offers of payments with the intent of being influenced and rewarded for taking official  
8 action, and causing other employees of FPD to take official action to have Person Y signed up as a FPD  
9 confidential informant. Further, it was a purpose of the conspiracy for SOMPHOUNE to attempt to  
10 protect himself and other individuals involved in the manufacturing and distribution of marijuana from  
11 investigation and prosecution by state and federal law enforcement by having Person Y signed up as a  
12 FPD confidential informant.

13 3. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt  
14 acts, among others, were committed in the Eastern District of California and elsewhere:

15 a. On or about October 20, 2013, SOMPHOUNE met with Person Y to provide Person Y  
16 with information about a search warrant executed by law enforcement and to notify Person Y  
17 that he was being investigated by law enforcement officers.

18 b. On or about October 21, 2013, SOMPHOUNE met with Person Y to inform Person Y  
19 that KUMAGAI and others were asking for \$60,000 in return for closing the purported  
20 investigation into Person Y. SOMPHOUNE also informed Person Y that KUMAGAI would be  
21 available to meet with Person Y to discuss the bribe payment.

22 c. On or about October 22, 2013, SOMPHOUNE and KUMAGAI met with Person Y.  
23 KUMAGAI informed Person Y about the purported federal investigation into Person Y, and  
24 stated that the purported investigation could be dropped in return for a bribe payment.

25 d. On or about October 30, 2013, SOMPHOUNE and KUMAGAI met with Person Y to  
26 discuss the proposed bribe payment. SOMPHOUNE told Person Y to make an initial \$30,000  
27 bribe and to then wait to pay the remaining \$10,000 at a later time. KUMAGAI provided Person  
28 Y with information about a purported pending prosecution against Person Y, and stated to Person

1 Y that he (KUMAGAI) could have the prosecution dropped in exchange for \$40,000.

2 KUMAGAI also stated to Person Y that KUMAGAI would arrange for Person Y to be signed up  
3 as a confidential informant for FPD, which would assist in having the prosecution against Person  
4 Y dropped.

5 e. On or about November 5, 2013, SOMPHOUNE and KUMAGAI met with Person Y to  
6 further discuss the bribe payment. KUMAGAI and SOMPHOUNE arranged with Person Y for  
7 the bribe payment to take place the following day.

8 f. On or about November 6, 2013, KUMAGAI met with Person Y to accept a \$20,000  
9 cash payment from Person Y, and did accept a \$20,000 cash payment from Person Y. Person Y  
10 was signed up as a FPD confidential informant after the bribe payment was made.

11 COUNT TWO

12 [18 U.S.C. §§ 666(a)(1)(B) & 2 – Federal Programs Bribery and Aiding and Abetting]

13 4. From in or about October 2013 to in or about March 2014, in the Eastern District of  
14 California and elsewhere, defendant KUMAGAI, a sworn officer and agent of FPD, an agency of the  
15 City of Fresno, State of California, which received benefits in excess of \$10,000 in the one-year period  
16 from in or about October 2012 to in or about October 2013, from federal programs involving a grant,  
17 contract, subsidy, loan, guarantee, insurance, and other forms of federal assistance, and defendant  
18 SOMPHOUNE, aided and abetted by each other and by others known and unknown, did corruptly  
19 solicit, demand, accept, and agree to accept something of value, intending to be influenced and rewarded  
20 in connection with the business, transaction, and series of transactions of such City of Fresno, State of  
21 California agency involving something of value of \$5,000 or more, namely: KUMAGAI, with the  
22 assistance of SOMPHOUNE and others known and unknown, accepted \$20,000 and agreed to accept up  
23 to \$60,000 from Person Y, intending to be influenced and rewarded in connection with the official acts  
24 of KUMAGAI as a police detective of FPD, an agency of the City of Fresno, State of California, and the  
25 official acts of others known and unknown.

26 ///

27 ///

1 COUNT THREE

2 [18 U.S.C. § 1951– Conspiracy to Commit Extortion]

3 5. From in or about October 2013 through in or about March 2014, in the Eastern District of  
4 California and elsewhere, KUMAGAI and SOMPHOUNE, with each other and persons known and  
5 unknown, in KUMAGAI’s capacity as a sworn officer and agent of FPD and with the assistance of  
6 SOMPHOUNE and others known and unknown, did knowingly and willfully conspire to obstruct, delay,  
7 and affect, in any way and degree, commerce and the movement of articles and commodities in  
8 commerce by extortion, as those terms are defined in Title 18, United States Code, Section 1951; that is,  
9 KUMAGAI, while an officer of FPD, conspired with SOMPHOUNE and others known and unknown to  
10 obtain up to \$60,000 not due to KUMAGAI and his office, and to which he was not entitled, from  
11 Person Y, with Person Y’s consent, under color of official right.

12 COUNT FOUR

13 [18 U.S.C. §§ 1951 & 2 – Attempted Extortion and Aiding and Abetting]

14 6. From in or about October 2013 through in or about March 2014, in the Eastern District of  
15 California and elsewhere, KUMAGAI and SOMPHOUNE, aided and abetted by each other and by  
16 others known and unknown, did knowingly and unlawfully attempt to obstruct, delay, and affect  
17 commerce and the movement of articles and commodities in commerce by extortion, as those terms are  
18 defined in Title 18, United States Code, Section 1951; that is KUMAGAI, while an officer and agent of  
19 FPD, with assistance from SOMPHOUNE and others known and unknown, attempted to obtain up to  
20 \$60,000 not due to KUMAGAI and his office, and to which he was not entitled, from Person Y, with  
21 Person Y’s consent, under color of official right.

22 \* \* \*

23 The bases for my knowledge and for the foregoing charges are, in part, as follows:

24 7. I have been employed with the DEA since January 2012. I am currently a special agent. I  
25 have been assigned to Enforcement Group One at the Fresno Residence Office since July 2012. I have  
26 been personally involved in the investigation of this matter, along with agents of the Federal Bureau of  
27 Investigation (“FBI”), the Internal Revenue Service – Criminal Investigation (“IRS-CI”), and other  
28

1 federal investigative agencies. This affidavit is based upon my investigation, my conversations with  
2 other law enforcement agents, and my examination of reports, records, and other evidence obtained  
3 through subpoenas, interviews, search warrants, surveillance, Title III surveillance, and other covert  
4 investigative techniques.<sup>1</sup> Because this affidavit is being submitted for the limited purpose of  
5 establishing probable cause, it does not include all the facts that I have learned during the course of my  
6 investigation.  
7

### 8 OVERVIEW

9 8. As detailed below, from in or about October 2013, up to and including in or about March  
10 2014, KUMAGAI, a Vice Unit detective with FPD, and SOMPHOUNE, a marijuana trafficker, solicited  
11 a bribe payment of up to \$60,000 from Person Y. In return for the bribe payment, KUMAGAI and  
12 SOMPHOUNE told Person Y that the purported federal criminal investigation into Person Y would be  
13 dropped and that Person Y would be signed up as a confidential informant for FPD. KUMAGAI and  
14 SOMPHOUNE told Person Y that he would be signed up as a confidential informant for FPD, which  
15 would assist KUMAGAI in having the purported criminal investigation into Person Y dropped.  
16

17 9. Throughout October and early November 2013, KUMAGAI and SOMPHOUNE met with  
18 Person Y on several occasions to discuss the details of the proposed bribe payment. On November 6,  
19 2013, Person Y made a direct, in-person payment to KUMAGAI of approximately \$20,000 cash.  
20 Person Y was later signed up as a confidential informant for FPD by another individual.  
21

### 22 BACKGROUND ON RELEVANT INDIVIDUALS

23 10. The Fresno Police Department (“FPD”) is an agency of the City of Fresno in the State and  
24 Eastern District of California. FPD is vested by Section 830 et. seq. of the California Penal Code with  
25 law enforcement powers, as well as the exercise and performance of all duties and obligations imposed  
26 on the agency by law.  
27

28 <sup>1</sup> Additional information regarding certain evidence is contained in “Attachment A” to the Complaint.

1 11. FPD is divided into several divisions, including the Investigative Services Division. The  
2 Special Investigations Bureau is located within the Investigative Services Division. Further, the Vice  
3 and Intelligence Unit is located within the Special Investigations Bureau.

4 12. Based on my discussions with the Assistant United States Attorneys (“AUSAs”) assigned to  
5 this case, who have spoken with senior officials at FPD about FPD’s federal funding, I believe that from  
6 in or about October 2012 through in or about October 2013, FPD received more than \$10,000 in funds  
7 from the United States Government in the form of grants, contracts, subsidies, loans, guarantees,  
8 insurance, and other forms of federal assistance.

9  
10 13. KUMAGAI is a detective in the Vice and Intelligence Unit of FPD.

11 14. SOMPHOUNE resides in Fresno, California. SOMPHOUNE is involved in and associates  
12 with other individuals in the manufacturing and distributing marijuana.

13  
14 15. Person Y is an individual under investigation for manufacturing and distributing marijuana,  
15 and other criminal violations.

16 **THE INVESTIGATION OF SOMPHOUNE AND PERSON Y**

17 16. In 2012, the DEA, IRS-CI and other federal law enforcement agencies (the “case agents”)  
18 began investigating a group of individuals based in the Fresno area suspected of cultivating large  
19 volumes of marijuana in California and distributing that marijuana to other states. Case agents were also  
20 investigating these individuals for using bank accounts to launder the cash proceeds of their marijuana  
21 sales. As is common in drug trafficking investigations, case agents consulted and worked with local law  
22 enforcement agencies, including the Major Narcotics Unit of FPD.

23  
24 17. The individuals under investigation included SOMPHOUNE, Person Y, Paul Coong Lay,  
25 a/k/a “Brother Paul,” and Chan Coong Lay, a/k/a “Younger Brother.” On March 14, 2013, Paul Coong  
26 Lay and Chan Coong Lay and thirty-five other individuals were indicted by a federal grand jury in the  
27 Southern District of New York for, *inter alia*, conspiracy to distribute marijuana and money laundering.  
28

1 SOMPHOUNE and Person Y were not named as defendants in that case. That case is currently pending  
2 in the Southern District of New York as to Paul Coong Lay and Chan Coong Lay.

3 18. As part of the investigation into SOMPHOUNE, KUMAGAI, Person Y, and other  
4 individuals, case agents, including myself, have executed numerous search warrants, subpoenaed bank  
5 records, conducted surveillance, interviewed witnesses, carried out Title III surveillance, and engaged in  
6 other covert investigative techniques.  
7

8 **MEETINGS TO EXTORT AND SOLICIT BRIBE PAYMENTS FROM PERSON Y**

9  
10 **October 20, 2013 Meeting Between SOMPHOUNE and Person Y**

11 19. On October 20, 2013, SOMPHOUNE met with Person Y. During the meeting,  
12 SOMPHOUNE informed Person Y that law enforcement agents had searched a residence in Fresno,  
13 California and had seized, *inter alia*, several pounds of processed marijuana. SOMPHOUNE told  
14 Person Y that SOMPHOUNE was notified by other individuals (believed by case agents to be involved  
15 in the manufacture and distribution of marijuana) who were notified by a law enforcement officer.  
16 According to SOMPHOUNE, law enforcement agents believed that the searched residence was  
17 associated with Person Y, and that the search was conducted to further the investigation into Person Y.  
18 SOMPHOUNE also informed Person Y that the DEA had a case against Person Y, but the DEA did not  
19 have much evidence against Person Y.

20 **October 21, 2013 Meeting Between SOMPHOUNE and Person Y**

21 20. The following night, on October 21, 2013, SOMPHOUNE met with Person Y.  
22 SOMPHOUNE reiterated to Person Y that the search of the above-referenced residence was conducted  
23 to further the investigation into Person Y. SOMPHOUNE also told Person Y that there is a federal  
24 agent who wanted money in return for closing the purported case against Person Y. Further,  
25 SOMPHOUNE told Person Y that KUMAGAI, the federal agent, and other law enforcement officers  
26 were asking for \$60,000 from Person Y in return for closing the purported case against Person Y, though  
27 the final price might be negotiable.<sup>2</sup> SOMPHOUNE also told Person Y that the several pounds of

28 <sup>2</sup> I know and have spoken with the case agents. I can confirm that during this time period the

1 marijuana seized from the searched residence belonged to KUMAGAI and another individual (non-law  
2 enforcement), and that KUMAGAI was planning to be at SOMPHOUNE's residence the following  
3 evening to collect reimbursement for the seized marijuana. Accordingly, SOMPHOUNE encouraged  
4 Person Y to come to SOMPHOUNE's residence the following evening so that Person Y could speak to  
5 KUMAGAI about the proposed bribe payment.

6 **October 22, 2013 Meeting Between SOMPHOUNE, KUMAGAI, and Person Y**

7 21. The following night, on October 22, 2013, SOMPHOUNE, KUMAGAI, and Person Y met  
8 at SOMPHOUNE's residence. KUMAGAI spoke with Person Y about the purported federal  
9 investigation into Person Y, and informed him (Person Y) that the investigation could be dropped in  
10 return for a bribe payment. As part of the deal, KUMAGAI informed Person Y that he (Person Y)  
11 would be signed up as a confidential informant for FPD, which would protect him from further  
12 investigation. Surveillance and other investigative techniques revealed that SOMPHOUNE made a cash  
13 payment to KUMAGAI at the conclusion of the meeting.

14 **October 30, 2013 Meeting Between SOMPHOUNE, KUMAGAI, and Person Y**

15 22. On October 30, 2013, SOMPHOUNE, KUMAGAI and Person Y met in person to discuss  
16 the proposed bribe payment. At approximately 9:30 p.m., SOMPHOUNE picked up Person Y at Person  
17 Y's place of business and then drove Person Y to his (SOMPHOUNE's) residence, and then to a public  
18 parking lot, where they then met with KUMAGAI inside SOMPHOUNE's vehicle.

19 23. SOMPHOUNE told Person Y to make an initial \$30,000 bribe and to then wait to pay the  
20 remaining \$10,000 at a later time. KUMAGAI told Person Y that the United States Attorney's Office  
21 had filed a complaint against Person Y for money laundering and conspiracy to distribute narcotics.<sup>3</sup>  
22 KUMAGAI stated that for \$40,000, he and others could have the purported criminal case against Person  
23 Y dropped, and that, as part of the deal, KUMAGAI would arrange for Person Y to be signed up as a  
24 confidential informant for FPD.

25 case agents, including myself, have not had any deal with SOMPHOUNE, KUMAGAI, or Person Y to  
26 have the purported case against Person Y dropped in return for a cash bribe.

27 <sup>3</sup> I know from my work on this investigation and from my discussions with the United States  
28 Attorney's Office (the "USAO") that the USAO had not filed a complaint against Person Y during this  
time period.

1 November 5, 2013 Meeting Between SOMPHOUNE, KUMAGAI, and Person Y

2 24. On the evening of November 5, 2013, SOMPHOUNE picked up Person Y to drive to a  
3 public parking lot to meet with KUMAGAI. During the meeting, Person Y told KUMAGAI that he  
4 (Person Y) would only be able to pay \$20,000. KUMAGAI expressed disappointment and told Person  
5 Y that he would have to pay another \$10,000 within a month. KUMAGAI told Person Y that he (Person  
6 Y) would be signed up as a confidential informant soon after he (KUMAGAI) received the bribe  
7 payment. Following the meeting, SOMPHOUNE sent text messages to Person Y discussing the  
8 proposed time for the bribe payment that was planned for the following day.

9 November 6, 2013 \$20,000 Cash Hand Off from Person Y to KUMAGAI

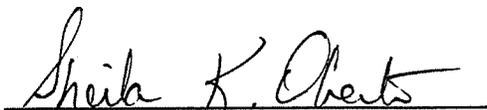
10 25. The following day, on November 6, 2013, Person Y met with KUMAGAI around 9:10 a.m.  
11 at a public parking lot. KUMAGAI and Person Y discussed the bribe payment and the plan to have  
12 Person Y signed up as a confidential informant for FPD. At the end of the meeting, Person Y made a  
13 \$20,000 cash payment to KUMAGAI. Soon after the meeting, Person Y was signed up as a confidential  
14 informant for FPD by another individual.

15  
16 *Approved as to form.*

17   
18 Grant B. Rabenn  
19 Assistant United States Attorney

20   
21 Ryan Jensen  
22 Special Agent  
23 Drug Enforcement Administration

24 Sworn to before me this  
25 17<sup>th</sup> day of March 2014

26   
27 HON. SHEILA K. OBERTO  
28 United States Magistrate Judge  
Eastern District of California