

COPY

UNITED STATES DISTRICT COURT

UNDER SEAL

for the

Central District of California

United States of America

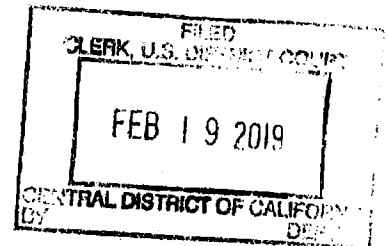
v.

GABRIEL HERNANDEZ,

Defendant

Case No.

MJ 19-00580



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 of January 16, 2019 in the county of Los Angeles in the Central District of California, the defendant(s) violated:

Code Section

21 U.S.C. § 841(a)(1)

Offense Description

Distribution and dispensing of a controlled substance

This criminal complaint is based on these facts:

Please see attached affidavit.

☒ Continued on the attached sheet.

[5]

Complainant's signature

Jessica Lohner, Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date:

2/16/19

City and state: Los Angeles, California

Judge's signature

Hon. Suzanne Segal, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT

I, Jessica Lohner, being duly sworn, declare and state as follows:

I. INTRODUCTION

1. I am a Special Agent ("SA") with the Drug Enforcement Administration ("DEA"), and have been so employed since October, 2015. I am currently assigned to the DEA's Riverside District Office, Tactical Diversion Squad ("TDS"), investigating offenses related to controlled substance trafficking, illegal diversion of controlled pharmaceutical substances, and money laundering. I attended and successfully completed 20 weeks of Basic Agent Training at the DEA Academy, Quantico, Virginia. The training included numerous phases comprised of classroom education and proficiency, practical application and evaluation, and tactics/firearms. During my employment with the DEA, I have participated in numerous narcotics investigations, conducted physical surveillance, executed numerous search warrants, participated in enforcement operations, conducted suspect interviews, executed narcotic seizures, and handled several confidential sources. Prior to joining the DEA, I was employed with the United States Department of Homeland Security Customs and Border Protection. I was a Border Patrol Agent for approximately eight and a half years. During this time I was a certified narcotics canine handler for approximately six years. During this time I was also detailed to the DEA's Riverside District Office, Task Force Group 1, for approximately three months.

II. PURPOSE OF AFFIDAVIT

2. This affidavit is made in support of an application for a warrant to search the following location (collectively, "the Target Locations"):

a. VORTEX WELLNESS & AESTHETICS ("VORTEX"), 4195 North Viking Way, #120, Long Beach, California 90808 ("Target Location #1"); and

b. The residence of Gabriel HERNANDEZ ("Target Location #2, and with Target Location #1, the "Target Locations"), 1011 West Alberta Street, Anaheim, CA 92805.

3. The Target Locations are further described in Attachments A-1 and A-2, which are incorporated as though fully set forth herein. The items to be seized are described in Attachment B, which is also incorporated as though fully set forth herein.

4. Additionally, this affidavit is made in support of applications for an arrest warrant and criminal complaint against Gabriel Hernandez (hereinafter "HERNANDEZ") for a violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(C) on or about January 16, 2019: distribution of a controlled substance (oxycodone), a schedule II narcotic drug controlled substance, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose.

5. The facts set forth in this affidavit are based upon my personal observations, my training and experience, and information obtained from various law enforcement personnel and

witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrants and does not purport to set forth all of my knowledge of or investigation into this matter. Unless specifically indicated otherwise, all conversations and statements described in this affidavit are related in substance and in part only.

III. BACKGROUND REGARDING PRESCRIBING CONTROLLED SUBSTANCES

6. Based on my training and experience with TDS, and the consultation of other agents, I know that the distribution of controlled substances must be in compliance with certain federal rules and regulations, as explained in part and in summary in the following subsections:

a. Title 21, United States Code, Section 812 establishes schedules for controlled substances; such controlled substances are listed in Schedule I through Schedule V depending on the level of potential for abuse, the current medical use, and the level of possible physical dependence. 21 C.F.R. Part 1308 provides further listings of scheduled drugs. Controlled substance pharmaceuticals are listed as controlled substances from Schedule II through V, with Schedule II identifying the drugs considered the most dangerous. There are other drugs that are available only by prescription but are not classified as controlled substances, such as antibiotics, and other drugs that can be acquired over the counter, such as aspirin.

b. Pursuant to Title 21, United States Code, Section 822, controlled prescription drugs may only be prescribed, dispensed, or distributed by those persons who are registered

with the Attorney General of the United States to do so (with some exceptions, such as delivery persons). The authority to register persons has been delegated to the DEA by the Attorney General.

c. Section 1306.04 of Title 21 of the Code of Federal Regulations sets forth the requirements for a valid prescription. It provides that for a "prescription for a controlled substance to be effective [it] must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription."

d. 21 U.S.C. § 841(a)(1) makes it an offense for any person to knowingly and intentionally distribute or dispense a controlled substance except as authorized by law. Distribution of a scheduled controlled substance in violation of 21 U.S.C. § 841(a)(1) (often referred to as "diversion") by a medical doctor occurs when a medical doctor knowingly and intentionally prescribes a controlled substance, knowing the drugs were controlled, for a purpose other than a legitimate medical purpose and outside of "the usual course of professional practice." See *United States v. Moore*, 423 U.S. 122, 124 (1975) ("We . . . hold that registered physicians can be prosecuted under 21 U.S.C. § 841 when their activities fall outside the usual course of professional practice."); see also *United States*

v. *Feingold*, 454 F.3d 1001, 1008 (9th Cir. 2006) ("[T]o convict a practitioner under § 841(a), the government must prove (1) that the practitioner distributed controlled substances, (2) that the distribution of those controlled substances was outside the usual course of professional practice and without a legitimate medical purpose, and (3) that the practitioner acted with intent to distribute the drugs and with intent to distribute them outside the course of professional practice.").

a. The Medical Board of California formally adopted a policy statement entitled "Prescribing Controlled Substances for Pain." The Medical Board's guidelines for prescribing a controlled substance for pain state that the practitioner must obtain a medical history and conduct a physical examination. Such history and exam include an assessment of the pain and physical and psychological function; substance abuse history; prior pain treatment; assessment of underlying or coexisting diseases and conditions; and documentation of the presence of a recorded indication for the use of a controlled substance.

b. California Business and Professions Code, Section 2242(a), states that there must be a logical connection between the medical diagnosis and the controlled substance prescribed: "Prescribing, dispensing, or furnishing dangerous drugs . . . without an appropriate prior examination and a medical indication, constitutes unprofessional conduct." A practitioner must make "an honest effort to prescribe for a patient's condition in accordance with the standard of medical practice

generally recognized and accepted in the country." *United States v. Hayes*, 794 F.2d 1348, 1351 (9th Cir. 2006).

IV. STATEMENT OF PROBABLE CAUSE

A. Background

7. I am investigating HERNANDEZ for unlawfully prescribing controlled substances outside the usual course of professional practice and without a legitimate medical need at VORTEX WELLNESS & AESTHETICS ("VORTEX"), located at Target Location #1 (4195 North Viking Way #120 in Long Beach). The VORTEX website (www.vortex-wellness.com/services/long-beach-pain-management/) indicates that the business offers pain management services under the direction of Dr. Jeffrey OLSON, who is assisted by HERNANDEZ. A commercial database query identifies VORTEX's address as Target Location #1 and lists the phone numbers of (323) 549-3420 and (562) 988-1700. In addition, Rikki HUGHES (ex-wife of Darryl HARRIS) is listed as the president and business contact.¹

8. HERNANDEZ is registered with the DEA as a Physician Assistant under DEA registration number MH2417334, at Target Location #1. A license verification search through the

¹ Although HERNANDEZ is legally supposed to be supervised by OLSON, agents believe that this is a sham arrangement and, moreover, that HERNANDEZ is the sole practitioner at Target Location #1. We know that OLSON also works at other locations in Palm Springs (approximately 120 miles from VORTEX) and in Los Angeles (also miles away from VORTEX). Moreover, agents have not observed OLSON at Target Location #1 during surveillances at the location, and agents observed OLSON at the Palm Springs clinic on February 15, 2019. Additionally, agents have observed from CURES data for OLSON that he has issued less than 20 prescriptions in all of 2018, reflecting that OLSON is prescribing few if any controlled drugs (at VORTEX or elsewhere).

California Department of Consumer Affairs' online portal indicates that HERNANDEZ has an active Physician Assistant license (PA17831) and does not possess any specializations in the areas of pain management or psychiatry.

9. Recent surveillances on January 15, 2019 and February 12, 2019, as well as California Department of Motor Vehicle records for HERNANDEZ' motor vehicle operator's license and vehicle registration show that HERNANDEZ resides at Target Location #2.

B. CURES Data

10. I have reviewed records for controlled drugs prescribed by HERNANDEZ from the California Department of Justice's Controlled Substance Utilization Review and Evaluation System ("CURES") database. CURES tracks all controlled drugs at Schedules II through IV that are dispensed in California, including based on prescriptions filled at pharmacies, based on state law mandating all medical or pharmacy practitioners to submit accurate reports of such dispensation. A 24-month query of HERNANDEZ' CURES records for the approximate timeframe of November 26, 2016 through November 26, 2018 shows that HERNANDEZ prescribed over 5,900 controlled substances during that period, approximately 52% of which were for oxycodone, a schedule II narcotic. Of those oxycodone prescriptions, approximately 97% were prescribed by HERNANDEZ at 30 milligram strength, for a total of over 446,000 dosage units prescribed within the time frame. I know from my training and experience that 30 milligrams is the maximum strength of short-acting oxycodone

that is available on the wholesale market, and thus that 30-milligram oxycodone is particularly sought-after on the black market. I recognize that the high frequency of prescriptions of maximum strength oxycodone is a red flag of illicit diversion, and reflect a lack of individualized care (i.e., patients receiving varying strengths of oxycodone based on their individual needs).

a. I also observed from the CURES data for HERNANDEZ that his prescriptions for oxycodone and other narcotics are often prescribed in similar dangerous cocktails paired, including in particular with benzodiazepines (e.g., alprazolam) and/or the muscle relaxant carisoprodol. I know that cocktails of opiates with those drugs are particularly sought-after on the black market because the combination magnifies the overall high from taking the drugs, but that pairing a narcotic with those drugs also magnifies the overall risk of overdose death and addiction. When all three are prescribed together (a narcotic, benzodiazepine, and carisoprodol), the cocktail is commonly known on the black market as the "holy trinity" and is particularly sought-after by addicts, but also is particularly dangerous. I thus recognize that HERNANDEZ's pattern of prescribing opiates with benzodiazepines and/or carisoprodol is a major red flag of illicit diversion.

b. Investigators have also learned from a query with the Los Angeles Coroner's office that, on or about June 1, 2017, a 41-year old male with initials M.J.G. died of combined effects of alcohol, alprazolam, and hydrocodone. Post-mortem toxicology

found the presence of drugs in M.J.G.'s system, including the Schedule II opiate hydrocodone and the Schedule IV drug alprazolam. The CURES records for HERNANDEZ shows that on or around May 24, 2017, M.J.G. filled a prescription for the "holy trinity" cocktail of 150 pills of hydrocodone, 120 pills of alprazolam, and 120 pills of carisoprodol prescribed by HERNANDEZ, namely, approximately one week before his death.

C. Recruitment of CS and Undercover Buys

11. In or around September 2018, investigators recruited a cooperating source ("CS") who was a patient of HERNANDEZ and who received controlled substances via prescriptions written by HERNANDEZ at VORTEX on a monthly basis.² During interviews with

² The CS's criminal history includes an arrest by the Irvine Police Department in 2009 for possession of marijuana for sale. The CS had been arrested in September 2018 for selling controlled substances on the dark web, to include methamphetamine and counterfeit Adderall, and agreed to cooperate in hopes of leniency with respect to prosecution. The information provided by the CS set forth herein has been corroborated by independent investigation. On January 23, 2019, the government learned that the CS had (after the September 2018 arrest), without authorization from the government, ordered a pill-press die and pill press (which could be used to make counterfeit Adderall). Additionally, the government learned that the CS had (after the September 2018 arrest), without authorization from the government, used a fictitious identity to open a mailbox at a UPS store, where purchases that CS made of amphetamine sulfate (which is used to create counterfeit Adderall) had been shipped. The CS was arrested, de-activated as a confidential source with the DEA, and agreed to plead guilty to a two-count information charging him/her with 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(viii) (distribution of methamphetamine) and 18 U.S.C. § 1956(a)(1)(B)(i) (money laundering). In the plea agreement, the government agreed to bring to the Court's attention the CS's cooperation. Subsequent to the CS's signing the aforementioned plea agreement, investigators learned that prior to the CS's arrest and de-activation, the CS also hid a duffel bag of rifles near his place of work, and did not disclose this to agents when confronted about the CS's other activities that were conducted without law enforcement authorization.

investigators, the CS stated female employees at VORTEX operate the business, including making appointments, and in directing HERNANDEZ on who will be seen and who will get what prescriptions. Agents have identified the female office workers as Viniesha LOMACKS ("LOMACKS") and Lisa HUGHES ("HUGHES"), who were also identified by the CS via photos. The CS also showed agents an electronic appointment reminder from VORTEX which shows the CS's appointment as being with Dr. Olson, but the CS stated he/she does not remember ever meeting or seeing Dr. Jeffery Olson at the appointment or at VORTEX at any time.

12. On or around November 6, 2018, agents conducted a "buy-walk" from HERNANDEZ at VORTEX (Target Location #1) utilizing the CS, who was in possession of an undercover recording device, and paid LOMACKS using DEA Official Advanced Funds (OAF). During the CS's brief interaction with HERNANDEZ, HERNANDEZ gave the CS prescriptions for 20 pills of 10-mg Valium (a Schedule IV benzodiazepine commonly known as diazepam), 45 pills of maximum 2-mg strength Xanax (alprazolam, also a Schedule IV benzodiazepine), 180 pills of 30-mg oxycodone, five pills of maximum 10-mg strength Norco (a brand name for the Schedule II narcotic hydrocodone), and 60 pills of 100-mg Colace (a non-controlled stool softener). The recording reflects the CS's visit with HERNANDEZ lasted only a few minutes and that HERNANDEZ conducted no physical examination. Moreover, the video recording also shows that the door to HERNANDEZ's office was left open, such that the CS's recording device partially captured the interior of the office while the CS was in the

waiting room; HERNANDEZ's meetings with the other patients captured in the recordings likewise show that meetings between HERNANDEZ and others were brief.

a. During a debriefing after the visit, the CS stated HERNANDEZ already had the prescriptions filled out when the CS entered HERNANDEZ's office,³ and that HERNANDEZ told the CS he/she will need to see a psychiatrist for Xanax in the future. The CS further said HERNANDEZ has been making the same comments regarding Xanax for "a while," yet continued to prescribe it. The CS likewise confirmed that there was no physical examination or discussion of whether the CS felt pain or received related treatment. Investigators confirmed the CS's information to be accurate after reviewing the recording of the visit.

b. In reviewing the recording of the visit, investigators observed both LOMACKS and HUGHES working at VORTEX. The recording showed LOMACKS checking patients in, accepting payment for the visit/prescription, and making a photocopy of the signed prescription the CS obtained from HERNANDEZ. The recording also contained what appeared to be HUGHES taking patient blood pressure at a table in the VORTEX waiting area, adjacent to HERNANDEZ's office door.

13. On December 10, 2018, agents conducted a second "buy/walk" from HERNANDEZ at VORTEX, utilizing the CS and DEA OAF to make the purchase of the prescription/s. During this

³ According to the recording, HERNANDEZ provided pre-filled prescriptions to the CS.

visit, the CS received a prescription for 180 pills of 30-mg oxycodone, 40 pills of 2-mg alprazolam, 8 pills of 10-mg hydrocodone, 20 pills of diazepam, and 60 pills of Colace, which was again already written out when the CS met with HERNANDEZ.⁴ Here again, there was no physical examination performed by HERNANDEZ, nor was there discussion of the CS's pain. In reviewing the recording of the "buy/walk," Investigators once again observed HUGHES and LOMACKS present in the office and performing the same functions as during the "buy/walk" on November 6, 2018. In conducting the "buy/walk," investigators also attempted to introduce an undercover investigator ("UC") as an acquaintance of the CS, however the CS and UC were informed by LOMACKS that the UC would need to provide a recent MRI report before the UC could see HERNANDEZ. Because the UC did not provide a MRI report at that time, the UC did not speak with HERNANDEZ in the course of the "buy/walk."

14. On January 16, 2019, agents conducted a third "buy/walk" from HERNANDEZ at VORTEX, utilizing the CS. While the CS was in possession of recording devices during this visit, the video recording device failed and only parts of the interaction between the CS and HERNANDEZ can be heard on the audio recording. While the reason for the video recording failure could not be determined, I have reviewed the audio recording and I also am familiar with what the CS stated during a debriefing following this visit. HERNANDEZ told the CS that

⁴ The recording reflected that HERNANDEZ provided the CS with prescriptions quickly.

Dilaudid (a brand name for the Schedule II opiate hydromorphone) was added to the CS's usual prescriptions (which were again already written out), as a test/trial, because the CS is on long acting narcotics. I am aware that when people are on strong narcotics, for a long period of time it is likely the narcotics will lose effectiveness. HERNANDEZ asked the CS if the CS had Narcan at home; Narcan is a brand name for the drug naloxone, which is used to counteract opioid overdoses. The CS also asked HERNANDEZ about whether the CS could receive Soma (brand name for carisoprodol), to which HERNANDEZ explained, according to the debriefing of the CS, that President Trump was cracking down on opioids and so he couldn't prescribe that. The CS obtained a prescription for 180 pills of 30-mg oxycodone, 30 pills of 4-mg hydromorphone, 45 pills of 2-mg alprazolam, 5 pills of 10-mg hydrocodone, 20 pills of 10-mg diazepam, and 60 pills of Colace.

D. Expert Review

15. An expert review was conducted by Doctor Timothy Munzing based on CURES data for the queried period of November 26, 2016 through November 26, 2018, and video recorded CS visits to VORTEX on November 6, 2018 and December 10, 2018, as well as copies of the prescriptions obtained by the CS during those visits.⁵ In reviewing HERNANDEZ' CURES report for the queried

⁵ Dr. Munzing received his medical degree from UCLA School of Medicine in 1982. He has served as a medical expert consultant for the Medical Board of California since 2004 and as a medical expert consultant for the DEA since 2014. During that time, Dr. Munzing has formally reviewed and provided opinions in more than 100 cases, of which more than 70% have dealt in some

time period, Dr. Munzing looked for indications of medications being prescribed for medically legitimate purposes in the usual course of professional practice, and found that "to a fairly high level of certainty that after review of the medical records, once obtained if they exist, that [P.A.] HERNANDEZ failed to meet these requirements in prescribing these dangerous medications. These prescribing patterns are highly suspicious for medication abuse and/or diversion." Dr. Munzing made similar conclusions based on his review of the video-recorded CS visits, noting the prescribing of controlled substances following no medical examination and only very brief interaction with HERNANDEZ on both occasions demonstrate extreme departures from the standard of care required by Federal and State laws, and that "[HERNANDEZ's] actions are much closer to that of an illegal drug dealer than that of a physician, and the patient visits are a sham."

capacity with prescriptions of opioid and other controlled medications. Dr. Munzing has taught and/or lectured staff physicians, students, and medical residents on guidelines and appropriate practice in opioid prescribing. Dr. Munzing has nearly 30 years of clinical experience as a family physician with the Southern California Permanente Medical Group (Kaiser Permanente) in Santa Ana, California, during which time he served as a physician leader responsible for reviewing the quality of care given to patients and as a family medicine residency program Director teaching medicine to thousands of residents and medical students. Dr. Munzing also holds an appointment as a clinical professor at University of California Irvine School of Medicine. Dr. Munzing is board certified in family medicine and is a member of the American Pain Society and the American Academy of Integrative Pain Medicine. In its summer 2017 issue, the peer-reviewed Permanente Journal published an article authored by Dr. Munzing titled, "Physician Guide to Appropriate Opioid Prescribing in Noncancer Pain."

E. Pharmacist Tip

16. On or around November/December 2018, investigators were contacted by a pharmacist in the San Diego area regarding VORTEX and prescriptions issued by HERNANDEZ. The pharmacist was concerned as he was presented prescriptions issued by HERNANDEZ to patients with initials J.G., S.G., and F.S., all members of the same household in San Diego, which were simultaneously presented to the pharmacy. Each patient was prescribed 180 tablets of Roxicodone, a brand name of oxycodone, at 30 mg strength, in addition to patients F.S. and J.G. receiving prescriptions for 30 tablets of Xanax, a brand name of alprazolam at 2 mg strength, and J.G. receiving a prescription for 40 tablets of hydrocodone-acetaminophen at 10/325 mg strength. The pharmacist recognized that it was suspicious that three members of the same household would be receiving the same medications and that their residence was located hundreds of miles from VORTEX. The pharmacist contacted VORTEX to verify the prescriptions were valid and requested diagnosis for the patients. LOMACKS faxed the pharmacist a diagnosis that did not justify to the pharmacist's satisfaction, filling the prescriptions.

17. An examination of HERNANDEZ' CURES data shows that J.G. and F.S. live at the same address, along with two other persons filling HERNANDEZ prescriptions, E.G. and B.U. The CURES data also shows a Post Office Box as the address for S.G., though the date of birth shown in the data for S.G. is the same as what was on the prescriptions presented to the pharmacist.

Further, the CURES data shows all five patients are filling prescriptions issued by HERNANDEZ for large volumes of oxycodone, hydrocodone, and alprazolam at multiple pharmacies in the San Diego region.

F. Arrest of Oxycodone Dealers Receiving HERNANDEZ Prescriptions

18. Investigators recently learned that two patients with a long history of filling prescriptions signed by HERNANDEZ were recently arrested while attempting to sell oxycodone that they had received from one such prescription. The arrest occurred as part of a separate investigation, summarized below, conducted by DEA into an attorney, Jackie FERRARI, for large-scale trafficking in oxycodone and other drugs via the website Craigslist.

19. On January 8, 2019, the Costa Mesa Police Department arrested a person ("CS-2") for oxycodone trafficking-related state offenses. After he/she was arrested, CS-2 agreed to cooperate in the hope of obtaining prosecutorial or sentencing benefits. In an interview, CS-2 stated, among other things, that he/she purchases oxycodone from a trafficker named "Jackie" who is an attorney, both of which are consistent with FERRARI. CS-2 also identified a photograph of FERRARI as "Jackie," stated that "Jackie" advertises the sale of oxycodone on Craigslist, and stated that he/she has previously purchased oxycodone from "Jackie" at the her Downey residence. CS-2 consented to a search of his/her cellular telephone, during which the agents

observed that CS-2 had a long history of text messages with FERRARI coordinating the purchase of oxycodone.⁶

20. At agents' direction, CS-2 arranged via text message to purchase 50 pills of oxycodone from FERRARI on January 10, 2019 for \$1,200. FERRARI stated in the text messages to CS-2 that she had a new job in Beverly Hills and thus that the transaction would have to occur there in the afternoon during a break at work. In the afternoon of January 10, 2019, agents outfitted CS-2 with recording devices, provided \$1,200 in funds for the transaction, and conducted surveillance of CS-2 as he/she met with FERRARI at the agreed-upon location in Beverly Hills to complete the transaction. Agents met with CS-2 and retrieved the 50 pills that he/she had just acquired from FERRARI, along with the recording devices. Presumptive testing of the pills verified that they contain oxycodone.

21. Agents learned from the Costa Mesa Police Department that, on January 13, 2019, CS-2 received a text message from FERRARI (apparently a group text sent to multiple other recipients) stating that FERRARI recently obtained a new supply of oxycodone and other drugs available for sale.

22. On January 15, 2019, the Hon. Frederick F. Mumm, United States Magistrate Judge, issued a sealed complaint and related arrest warrant charging FERRARI with the controlled sale on January 10, 2019 (19-MJ-120), and search warrants for

⁶ The CS's rap sheet shows that he/she was convicted in California state court in 2015 for possession of a controlled substance and possession of a controlled substance for sale, for which the CS received three years' probation.

FERRARI's residence, vehicle, and cellular telephone (19-MJ-99, 19-MJ-100, and 19-MJ-102, respectively).

23. CS-2 and FERRARI arranged to conduct another oxycodone transaction in Beverly Hills on January 18, 2019, this time for 180 oxycodone pills in exchange for \$4,140. Under the arrangement they reached, CS-2 would meet FERRARI near the corner of Wilshire Boulevard and North Clark Drive in Beverly Hills at 6:00 p.m., provide the \$4,140 to FERRARI, and FERRARI would then meet with a supplier to receive 180 oxycodone pills.

24. At approximately 5:30 p.m. investigators established surveillance in the area of the arranged meeting.

a. At approximately 6:05 p.m., agents saw FERRARI walk from a nearby parking garage the front passenger door of CS-2's car. FERRARI spoke with CS-2 through the open window of the car.

b. At approximately 6:13 p.m., FERRARI then walked across North Clark Drive to a dark colored Lexus SUV, that was parked on the east curb just south of Wilshire Boulevard. FERRARI entered the front passenger door of this vehicle.

25. Believing that FERRARI was meeting with her supplier, investigators, to include officers in marked police cars and sheriff's uniforms, contacted and detained FERRARI, the unknown driver of the Lexus, and CS-2. CS-2 told the officer who responded to him/her (Costa Mesa Police Department Detective Joe Saar) that, according to the conversation that CS-2 just had with FERRARI, the person in the Lexus is another customer, and not FERRARI's supplier, and that FERRARI's supplier would be

driving a gray Prius. Detective Saar broadcasted via handheld radio to the surveillance teams to be looking for a gray Toyota Prius.

26. Santa Clarita Deputy Sheriff Bill Velek, who had detained and conducted a cursory search of FERRARI, found a blue plastic pill container containing numerous blue pills from FERRARI'S right front pants pocket (i.e., consistent with oxycodone pills, which are often blue in coloration) and a pill bottle marked as containing amphetamine salts (Adderall). Additionally, Deputy Velek recovered FERRARI's cellular telephone, which FERRARI was holding at the time she was detained. Deputy Velek gave the phone to DEA SA Bob Thomas; the phone was on and unlocked. SA Thomas saw numerous text messages pop up on the phone from someone identified in the phone's contacts as "New Supplier," which referenced meeting FERRARI to complete a transaction. FERRARI's phone then rang, and the caller ID on the screen identified the caller as the same person who had just sent the text messages, "New Supplier." Accordingly, investigators believed that the supplier was contacting FERRARI to notify her that he (the supplier) was about to arrive in the gray Prius to carry out their planned oxycodone transaction.

27. Soon thereafter, investigators saw a gray Toyota Prius turn southbound on Clark Drive from Wilshire Boulevard (i.e., toward the area where FERRARI had met with CS-2 and the other customer), and the officers observed the car slow as it approached the scene of FERRARI's arrest, during which the male

driver appeared to be looking around. Investigators followed the Prius and, after observing that its registration tags were expired, conducted a traffic stop at 221 South Robertson Boulevard in Beverly Hills, California. During the traffic stop, the driver (later identified as Anthony Charles MAVARO) admitted that his license was suspended following a prior conviction for driving under the influence. The officer arrested MAVARO for driving with a suspended license and ordered him out of the car. On conducting a search of his person incident to arrest, the officer found a plastic bindle containing apparent methamphetamine in MAVARO's front pants pocket. The passenger and only other occupant of the car, later identified as Miranda Adriana RAMIREZ, was also ordered out of the car while officers conducted a vehicle search. During the vehicle search, investigators found among other things the following:

a. Five prescription bottles bearing various pills, a white powdery substance, approximately \$937 cash, and a pink diary containing what investigators recognized to be pay-and-owe drug ledgers. Subsequent lab analysis verified that the pills in the bottles included 180 pills of oxycodone and 26 pills of the Schedule II narcotic hydromorphone, that the white powdery substance was 1.4 grams of fentanyl, and that the substance in MAVARO's pocket was approximately .1 gram of methamphetamine.

b. Various medical documentation in the car, including (1) VORTEX forms dated January 16, 2019, identifying MAVARO; and (2) a printout of MAVARO's CURES records showing

that, between October 29, 2018 and January 7, 2019, MAVARO had filled nine prescriptions for 30-mg oxycodone, 4-mg hydromorphone, or 350-mg carisoprodol, all issued by HERNANDEZ.

28. I have reviewed HERNANDEZ's CURES data and observed that MAVARO and RAMIREZ have a long history of filling HERNANDEZ prescriptions for 30-mg oxycodone and other drugs. Specifically, from September 2017 through January 2019, MAVARO filled prescriptions from HERNANDEZ for a total of 3,240 tablets of 30-mg oxycodone, 1,020 tablets of 350-mg carisoprodol, and 540 tablets of 4-mg hydromorphone. In that same time period, RAMIREZ filled prescriptions from HERNANDEZ for a total of 3,150 tablets of 30-mg oxycodone and 1,020 tablets of 350-mg carisoprodol. Further, CURES queries also revealed that, prior to receiving prescriptions from HERNANDEZ, MAVARO was filling prescriptions for 30-mg oxycodone, 10/325-mg hydrocodone-acetaminophen, and 350-mg carisoprodol written under the DEA registration of Dr. Jeffrey OLSON.

29. Officers interviewed MAVARO and RAMIREZ separately after they were each advised of their Miranda rights.

a. MAVARO said that he had just picked up his wife, RAMIREZ, and was heading home to Long Beach. When asked why he had so many prescription bottles, MAVARO said that he is an opiate addict. Officers asked MAVARO if he was coming to the location to meet with anyone, which MAVARO denied, saying that he was going home. When asked why he had so much cash on him, MAVARO did not have an answer.

b. RAMIREZ said that she and MAVARO were coming to the area to meet with someone, but she did not who they were meeting or why the meeting was taking place. When asked about the oxycodone, RAMIREZ stated she recently had surgery for a medical condition and needed the oxycodone for pain.

30. Agents also interviewed FERRARI after she was advised of her Miranda rights. FERRARI admitted among other things to facilitating the sales of oxycodone to CS-2. FERRARI stated that she was to meet with a supplier, who drives a gray Prius. FERRARI did not give the name of the supplier.

VI. ADDITIONAL PROBABLE CAUSE FOR ITEMS TO BE SEIZED

31. Based on my training, education, experience, and discussions with other law enforcement officers, I know the following regarding the common modus operandi of controlled drug diversion committed by medical practitioners:

a. Such practitioners often keep controlled substances and drugs, records of drug transactions, criminal proceeds, ledgers of compromised patients and beneficiaries (i.e., those to whom invalid prescriptions are issued), and other records within their businesses and other secure locations (i.e., residences, safe deposit boxes, and storage areas), and vehicles, and conceal such items from law enforcement authorities. The drugs/prescriptions may be distributed or sold, but documentary records and ledgers remain. Such records often include books, account ledgers, payments, and/or notes and other evidence of financial transactions relating to obtaining,

transferring, and spending substantial sums of money which result from engaging in drug trafficking activities.

b. Such practitioners also often retain personal and business notes, letters, and correspondence relating to their narcotics/prescription orders at their residences, businesses, safe deposit boxes, in storage areas, and electronically via digital devices such as cellular telephones and computers.

c. Such practitioners often retain telephone and address books and appointment books identifying additional individuals, including patients and patient recruiters, involved in drug diversion or health care fraud.

d. Such practitioners commonly use personal communication devices and services to coordinate and otherwise further their criminal activities, such as communications with criminal associates or patients via cellular telephone calls or via cellular text messaging. I am aware of multiple recent cases in which, on searching cellular telephones of practitioners, investigators obtained text messages discussing, for example, the issuance of prescriptions to patient recruiters, the per-pill price of narcotics to be sold to drug traffickers, and coordinating meetings for the purpose of transferring fraudulent prescriptions from a corrupt physician to a corrupt pharmacy to conceal illicit black market sales.

e. Such practitioners often maintain large amounts of United States currency in their residences and businesses, safe deposit boxes, and other storage areas, including to

Attachment B of this affidavit, will be found in a search of the **Target Locations**, as further described above and in Attachments A-1 and A-2 of this affidavit.

35. Based on the foregoing, I also submit that there is probable cause to arrest Gabriel HERNANDEZ for a violation of 21 U.S.C. § 841(a)(1) (unlawful distribution of controlled substances, and related conspiracy).

(S)

Jessica Lohner
DEA Special Agent

Subscribed to and sworn before me
this 19 day of February, 2019.

Suzanne H. Segal

UNITED STATES MAGISTRATE JUDGE
SUZANNE H. SEGAL

h. In summary, I know that such corrupt practitioners will often keep incriminating evidence not only in the medical practice location itself, but also in other secure locations such as their residence, for which an inspector or auditor is unlikely to seek or gain access. For example, I am aware of multiple recent cases involving search warrants executed at the residences of corrupt practitioners (doctors and pharmacists) that resulted in the seizure of evidence such as bulk currency, pay/owe ledgers, bulk controlled drugs, controlled drugs bearing labels reflecting that they were prescribed to a third party, lists of identity theft victims used to conceal black market diversion, medical records for such identity theft victims, and incriminating communications on personal communication devices such as with patient recruiters or black market patient recruiters. I also know from Assistant United States Attorney Benjamin R. Barron that the Ninth Circuit applies a general presumption that individuals engaged in illicit drug trafficking are presumed to keep evidence of their activities in their residence. See, e.g., *United States v. Fannin*, 817 F.2d 1379, 1382 (9th Cir. 1987) ("[E]vidence discovered by [] officers linking the defendants to a drug scheme provide[s] 'more than a sufficient showing for obtaining the warrant to search [their]... residence.'").

V. TRAINING AND EXPERIENCE ON DIGITAL DEVICES

32. As used herein, the term "digital device" includes any electronic system or device capable of storing or processing data in digital form, including central processing units;

desktop, laptop, notebook, and tablet computers; personal digital assistants; wireless communication devices, such as telephone paging devices, beepers, mobile telephones, and smart phones; digital cameras; gaming consoles (including Sony PlayStations and Microsoft Xboxes); peripheral input/output devices, such as keyboards, printers, scanners, plotters, monitors, and drives intended for removable media; related communications devices, such as modems, routers, cables, and connections; storage media, such as hard disk drives, floppy disks, memory cards, optical disks, and magnetic tapes used to store digital data (excluding analog tapes such as VHS); and security devices. Based on my knowledge, training, and experience, as well as information related to me by agents and others involved in the forensic examination of digital devices, I know that data in digital form can be stored on a variety of digital devices and that during the search of a premises it is not always possible to search digital devices for digital data for a number of reasons, including the following:

a. Searching digital devices can be a highly technical process that requires specific expertise and specialized equipment. There are so many types of digital devices and software programs in use today that it is impossible to bring to the search site all of the necessary technical manuals and specialized equipment necessary to conduct a thorough search. In addition, it may be necessary to consult with specially trained personnel who have specific expertise in

the types of digital devices, operating systems, or software applications that are being searched.

b. Digital data is particularly vulnerable to inadvertent or intentional modification or destruction. Searching digital devices can require the use of precise, scientific procedures that are designed to maintain the integrity of digital data and to recover "hidden," erased, compressed, encrypted, or password-protected data. As a result, a controlled environment, such as a law enforcement laboratory or similar facility, is essential to conducting a complete and accurate analysis of data stored on digital devices.

c. The volume of data stored on many digital devices will typically be so large that it will be highly impractical to search for data during the physical search of the premises. A single megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. Storage devices capable of storing 500 or more gigabytes are now commonplace. Consequently, just one device might contain the equivalent of 250 million pages of data, which, if printed out, would completely fill three 35' x 35' x 10' rooms to the ceiling. Further, a 500 gigabyte drive could contain as many as approximately 450 full run movies or 450,000 songs.

d. Electronic files or remnants of such files can be recovered months or even years after they have been downloaded

onto a hard drive, deleted, or viewed via the Internet.⁷

Electronic files saved to a hard drive can be stored for years with little or no cost. Even when such files have been deleted, they can be recovered months or years later using readily-available forensics tools. Normally, when a person deletes a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the hard drive until it is overwritten by new data. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space, i.e., space on a hard drive that is not allocated to an active file or that is unused after a file has been allocated to a set block of storage space, for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a swap or recovery file. Similarly, files that have been viewed on the Internet are often automatically downloaded into a temporary directory or cache. The browser typically maintains a fixed amount of hard drive space devoted to these files, and the files are only overwritten as they are replaced with more recently downloaded or viewed content. Thus, the ability to retrieve residue of an electronic file from a hard drive depends less on when the file was downloaded or viewed than on a particular user's operating system, storage capacity, and computer habits. Recovery of residue of electronic files from a hard drive

⁷ These statements do not generally apply to data stored in volatile memory such as random-access memory, or "RAM," which data is, generally speaking, deleted once a device is turned off.

requires specialized tools and a controlled laboratory environment. Recovery also can require substantial time.

e. Although some of the records called for by this warrant might be found in the form of user-generated documents (such as word processing, picture, and movie files), digital devices can contain other forms of electronic evidence as well. In particular, records of how a digital device has been used, what it has been used for, who has used it, and who has been responsible for creating or maintaining records, documents, programs, applications and materials contained on the digital devices are, as described further in the attachments, called for by this warrant. Those records will not always be found in digital data that is neatly segregable from the hard drive image as a whole. Digital data on the hard drive not currently associated with any file can provide evidence of a file that was once on the hard drive but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave digital data on the hard drive that show what tasks and processes on the computer were recently used. Web browsers, e-mail programs, and chat programs often store configuration data on the hard drive that can reveal information such as online nicknames and passwords. Operating systems can record additional data, such as the attachment of peripherals, the attachment of USB flash storage devices, and the times the computer was in use. Computer file systems can record data about the dates files were created and the sequence

in which they were created. This data can be evidence of a crime, indicate the identity of the user of the digital device, or point toward the existence of evidence in other locations. Recovery of this data requires specialized tools and a controlled laboratory environment, and also can require substantial time.

f. Further, evidence of how a digital device has been used, what it has been used for, and who has used it, may be the absence of particular data on a digital device. For example, to rebut a claim that the owner of a digital device was not responsible for a particular use because the device was being controlled remotely by malicious software, it may be necessary to show that malicious software that allows someone else to control the digital device remotely is not present on the digital device. Evidence of the absence of particular data on a digital device is not segregable from the digital device. Analysis of the digital device as a whole to demonstrate the absence of particular data requires specialized tools and a controlled laboratory environment, and can require substantial time.

g. Digital device users can attempt to conceal data within digital devices through a number of methods, including the use of innocuous or misleading filenames and extensions. For example, files with the extension ".jpg" often are image files; however, a user can easily change the extension to ".txt" to conceal the image and make it appear that the file contains text. Digital device users can also attempt to conceal data by

using encryption, which means that a password or device, such as a "dongle" or "keycard," is necessary to decrypt the data into readable form. In addition, digital device users can conceal data within another seemingly unrelated and innocuous file in a process called "steganography." For example, by using steganography a digital device user can conceal text in an image file that cannot be viewed when the image file is opened. Digital devices may also contain "booby traps" that destroy or alter data if certain procedures are not scrupulously followed. A substantial amount of time is necessary to extract and sort through data that is concealed, encrypted, or subject to booby traps, to determine whether it is evidence, contraband or instrumentalities of a crime. In addition, decryption of devices and data stored thereon is a constantly evolving field, and law enforcement agencies continuously develop or acquire new methods of decryption, even for devices or data that cannot currently be decrypted.

33. Other than what has been described herein, to my knowledge, the United States has not attempted to obtain this data by other means.

VI. CONCLUSION

34. For all the reasons described above, there is probable cause to believe that evidence of violations of 21 U.S.C. §§ 846 and 841(a)(1) (distribution of controlled substances, related conspiracy) and 21 U.S.C. § 843(a)(3) (acquiring or obtaining a controlled substance by misrepresentation, fraud, deception, or subterfuge), as described above and in

Attachment B of this affidavit, will be found in a search of the
Target Locations, as further described above and in
Attachments A-1 and A-2 of this affidavit.

35. Based on the foregoing, I also submit that there is
probable cause to arrest Gabriel HERNANDEZ for a violation of 21
U.S.C. § 841(a)(1) (unlawful distribution of controlled
substances, and related conspiracy).

Jessica Lohner
DEA Special Agent

Subscribed to and sworn before me
this ____ day of February, 2019.

UNITED STATES MAGISTRATE JUDGE

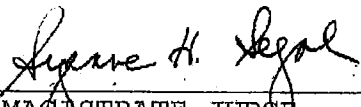
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Jessica Lohner
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this 19 day of February, 2019.



UNITED STATES MAGISTRATE JUDGE
SUZANNE H. SEGAL