

GERAGOS & GERAGOS

A PROFESSIONAL CORPORATION
LAWYERS
39TH FLOOR
350 S. GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3480
TELEPHONE (213) 625-3900
FACSIMILE (213) 625-1600

MARK J. GERAGOS SBN 108325
Attorney for Defendant SCOTT LEE PETERSON

McALLISTER & McALLISTER, Inc.
1012 11th Street, Suite 100
Modesto, CA 95354
KIRK W. McALLISTER SBN 47324
Attorney for Defendant SCOTT LEE PETERSON

FILED
03 OCT -7 PM 12:00

[Handwritten signature]

FILED BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

SCOTT LEE PETERSON,

Defendant.

Case No. 1056770

MOTION TO CONDUCT FRANKS HEARING

DATE: October 20, 2003
TIME: 8:30 a.m.
PLACE: Dept 2

TO: STANISLAUS COUNTY DISTRICT ATTORNEY; and

TO: CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that on October 20, 2003 at the hour of 8:30 a.m., or as soon thereafter as counsel can be heard, Defendant Scott Lee Peterson ("Mr. Peterson"), through counsel, Mark J. Geragos and Kirk McAllister, will move this Court for a hearing pursuant to *Franks v. Delaware* (1978) 438 U.S. 154.


The Motion will be based upon the grounds that the warrants in support of the applications for Wiretaps Nos. 2 and 3 contained numerous misstatements and omissions.

Rec'd 10-7-03

1 The Motion will be based on this Notice, the attached memorandum of points and
 2 authorities, the pleadings and records on file herein, and upon such other and further
 3 argument as may be presented to the Court at the hearing of this matter.

4
5 Dated: October 6, 2003

Respectfully submitted,
GERAGOS & GERAGOS

6
7
8 By: 
 9 MARK J. GERAGOS
 10 Attorney for Defendant
 11 SCOTT LEE PETERSON

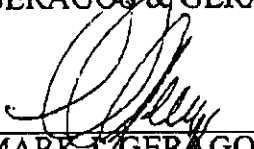
11 MOTION

12 Scott Lee Peterson, by and through counsel, hereby moves the Court for an
13 order(s) directing one or more of the following:

- 14 1. The conducting of a *Franks* hearing as to Wiretap Nos. 2 and 3.; and,
 15 discovery; and,
 16 2. Granting whatever other relief the Court may deem necessary and
 17 appropriate to further the ends of justice.

18
19 Dated: October 6, 2003

Respectfully submitted,
GERAGOS & GERAGOS

20
21
22 By: 
 23 MARK J. GERAGOS
 24 Attorney for Defendant
 25 SCOTT LEE PETERSON

26 ///
27 ///
28 ///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 As Mr. Peterson has set forth in great detail in prior filings, including his
5 [unredacted] motion to suppress Wiretap Nos. 2 and 3, the Affidavits of Stephen
6 Jacobson filed in support of the applications for the wiretaps were replete with false
7 statements or omissions. Consequently, Mr. Peterson believes the appropriate manner in
8 which the Court should address Wiretap Nos. 2 and 3 is to conduct a *Franks* hearing prior
9 to hearing the merits of Mr. Peterson's 1538.5 motion to suppress.

10 **II.**

11 **FALSE STATEMENTS OR OMISSIONS VITIATE PROBABLE CAUSE**

12 An accused has the right to attack the truthfulness of search warrant allegations

13 [W]here the defendant makes a substantial preliminary
14 showing that a false statement knowingly and intentionally, or
15 with reckless disregard for the truth, was included by the
16 affiant in the warrant affidavit, and if the allegedly false
17 statement is necessary to the finding of probable cause, the
18 Fourth Amendment requires that a hearing be held at the
19 defendant's request. In the event that at that hearing the
20 allegation of perjury or reckless disregard is established by the
21 defendant by a preponderance of the evidence, and, with the
22 affidavit's false material set to one side, the affidavit's
23 remaining content is insufficient to establish probable cause,
24 the search warrant must be voided and the fruits of the search
25 excluded to the same extent as if probable cause was lacking
26 on the face of the affidavit.

27 (Franks v. Delaware (1978) 438 U.S. 154, 155-156, 57 L.Ed.2d 667-668, 98 S.Ct. 2674,
28 2676-2677; see also People v. Benjamin (1999) 77 Cal.App.4th 264, 267-268.)

1 This is known as a *Franks* hearing. (See U.S. v. Maro (7th Cir. 2001) 272 F.3d
 2 817, 821) Evidence will be adduced at the preliminary examination showing that false
 3 and that misleading statements and omissions were included in the affidavits for wiretap
 4 which vitiate the finding of probable cause.

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


III.
CONCLUSION

In light of the foregoing, Mr. Peterson respectfully requests that the Court grant the relief requested.

Dated: October 6, 2003

Respectfully submitted,
GERAGOS & GERAGOS

By:



 MARK GERAGOS
 Attorney for Defendant
 SCOTT LEE PETERSON

PROOF OF SERVICE BY FAX

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 350 S. Grand Avenue, 39th Floor, Los Angeles, California 90071.

On execution date set forth below, I served the following

DOCUMENTS OR DOCUMENTS DESCRIBED AS:

- 1) **Motion to Exclude Testimony of Hypnotized Witness Kristen Dempewolf**
- 2) **Motion In Limine to Exclude Mitochondrial DNA Evidence**
- 3) **Motion In Limine to Exclude GPS Tracking Evidence**
- 4) **Motion to Exclude Dog Trailing Evidence**
- 5) **Motion to Conduct *Franks* Hearing**

_____ placing a true copy thereof enclosed in sealed envelopes with postage thereon fully prepaid, to the attorneys and their perspective addresses listed below, in the United States Mail at Los Angeles, California.

X transmitting by facsimile transmission the above document to the attorneys listed below at their receiving facsimile telephone numbers. The sending facsimile machine I used, with telephone number (213) 625-1600, complied with C.R.C. Rule 2003(3). The transmission was reported as complete and without error.

_____ personally delivering the document(s) listed above to the party or parties listed below, or to their respective agents or employees.

PARTIES SERVED BY FAX:

Rick Disatso, DDA **Kirk McAllister**
David P. Harris, DDA **Fax No.:209-575-0240**
Fax No.: 209-525-5545

Executed on October 6, 2003, at Los Angeles, California.

I declare under penalty of perjury that the above is true and correct.



RAFFI NALJIAN

DOCUMENT FIVE

MOTION TO CONDUCT *FRANKS* HEARING