

Filed JAN 21 2010  
ROSA JUNQUEIRO, CLERK

By Samuel Behar  
DEPUTY

Office of the Public Defender  
For the County of San Joaquin  
102 South San Joaquin Street, Room 1  
Stockton, CA 95202  
(209) 468-2808  
SAMUEL BEHAR, State Bar No.115435  
Attorneys for Defendant

SUPERIOR COURT FOR CALIFORNIA, COUNTY OF SAN JOAQUIN

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10	The People of the	)	No.SF112495A
11	State of California,	)	
12	Plaintiff,	)	NOTICE OF MOTION FOR
13	v.	)	CONTINUANCE
14	MELISSA HUCKABY,	)	Date: TBA
15	Defendant.	)	Time: TBA
		)	Dept: 32

PLEASE TAKE NOTICE that the defense on January 21 in the p.m.in Department 32 of the above-entitled Court, Defendant will request the court calendar the above-entitled matter for Continuance of the Motion to Suppress for the week of January 25, 2010 or until a date deemed suitable by the court. The matter is currently scheduled for Motion to Suppress February 16, 2010..

This motion will be based upon this notice of motion and motion, the attached declaration of counsel, and any evidentiary hearing that may be heard on this matter, and any Supplemental Points and Authorities that Defendant may file with leave of the Court.

WHEREFORE, Ms.HUCKABY moves the Court for an order continuing the matter.

1 DATED: January 21, 2010

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LAW OFFICES OF THE PUBLIC DEFENDER  
PETER FOX, Public Defender

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SAMUEL BEHAR  
Deputy Public Defender  
Attorneys for Defendant

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

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The People of the  
State of California,

Plaintiff,

v.

MELISSA HUCKABY,

Defendant.

No. SF112495A

DECLARATION OF COUNSEL IN  
SUPPORT OF MOTION FOR  
CONTINUANCE AND ORDER  
SHORTENING TIME

Date: TBA

Time: TBA

Dept: 32

I, Samuel Behar, declare:

1. I am the attorney representing the defendant, MELISSA HUCKABY, in the above-entitled action.
2. That this case is presently set for February 16, 2010, for motion to suppress in Department 35 of the above-entitled court.
3. For the following reasons, a two months continuance is necessary for the defense to properly prepare for the hearing:

A) The defense has not had access to the physical evidence seized in this case. On 11/17/09 a written request to view the evidence in the case was sent to Deputy District Attorney, Tom Testa. So far, the defense has not been given a date to view the evidence. The viewing of the evidence is a necessary preliminary to making the motions to

1 suppress.

2 B) Numerous subpoenas were issued in this case. The discovery received (while  
3 voluminous) does not contain the Return of Property provided to the residents in any of  
4 the searches. A request for all of the Returns has been made, and Defense awaits a reply.  
5 A comprehensive list of property seized is necessary before the motions to suppress can  
6 be made.

7 C) A central issue affecting all the motions to suppress is the admissibility of Defendant  
8 MELISSA HUCKABY'S 4/10/09 statement to Detective Bauer. (The contents of that  
9 statement were used in a number of Affidavits in Support of the Search Warrants.)

10 January 6, 2010, I received a memo from Deputy District Attorney Thomas Testa  
11 indicating "several TPD Detectives are being investigated regarding whether any TPD  
12 internal rules were violated in connection with Detective Nate Cogburn's comments to  
13 Melissa Huckaby on 4/10/09."

14 The defense intends to make efforts to secure this material which could support a claim of  
15 4th or 5th amendment violations. This material cannot be secured (through Pitches or  
16 other means) reviewed and investigated in the time allotted.

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18 D) There are additional facts in support of the motion to continue which, for reasons of  
19 confidentiality, can only be provided ex parte and in camera. Should the court require  
20 these additional facts, the defense can provide them at the time and date of the hearing,  
21 orally and outside the presence of the District Attorney.

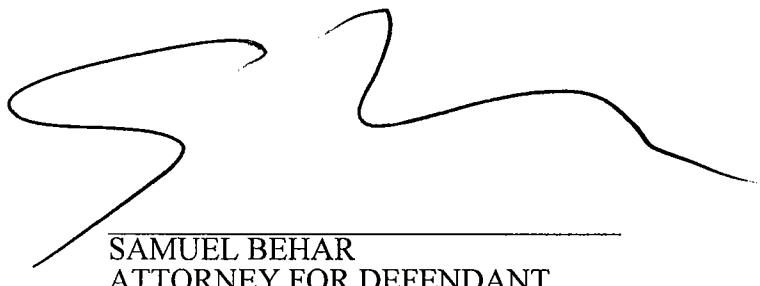
22 4) On January 15, 2010, I, Samuel Behar, spoke with the Deputy District Attorney  
23 regarding the continuance and my desire to place the matter on calendar for that purpose. At that  
24 time, the District Attorney indicated that he would not object to the motion. In fact, he indicated  
25 that based on our discussion he would call off the witnesses. On January 20, 2010, we again  
26 spoke, this time by phone. In this conversation, he requested that I get the matter before the court  
27 as soon as possible. He indicated that a continuance of one to two months would be acceptable  
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but that he needed a date certain so that he could subpoena the necessary witnesses.

5) I am requesting a hearing date on the Motion to Continue for the week of January 25, 2010. An uncontested hearing at the earliest date would be to the Court and both counsel's advantage.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Stockton, California, on January 21, 2010.



SAMUEL BEHAR  
ATTORNEY FOR DEFENDANT

*I've read this motion.  
No objection to short setting  
No objection to continuance of  
1-2 months for 1538.5 hearing  
due to my still being in  
trial in Dept 32  
Thomas Behar  
1-21-10*

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Filed

ROSA JUNQUEIRO, CLERK

By

*Cheryl Machado*  
DEPUTY

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SUPERIOR COURT FOR CALIFORNIA, COUNTY OF SAN JOAQUIN

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The People of the  
State of California,

Plaintiff,

v.

MELISSA HUCKABY,

Defendant.

No. SF112495A

POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR  
CONTINUANCE

**I.**

**THE DEFENDANT IS ENTITLED TO A CONTINUANCE  
ON A SHOWING OF GOOD CAUSE**

Penal Code section 1050(e) provides that, "Continuances shall be granted only upon a showing of good cause." The request must be supported by declarations, unless the court finds good cause to excuse the notice and declaration requirement. The declaration must be executed under penalty of perjury. (Brown w. Superior Court (1987) 189 Cal.App.3d 260, 265.) In the present case, the defense has provided such documentation; the notice given was the most timely notice practicable.

Although the grant or denial of a motion for continuance is within the Court's discretion (Ungar v. Sarafite (1964) U.S. 575), this discretion is not without bounds:

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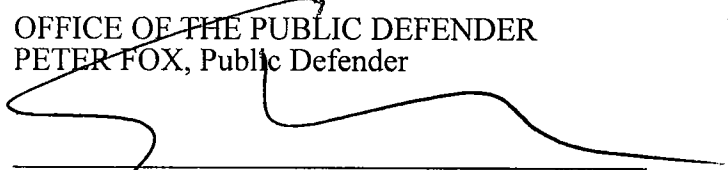
While the determination of whether in any given case a continuance should be granted normally rests in the discretion of the trial court, that discretion may not be exercised in such a manner as to deprive the defendant of a reasonable opportunity to prepare his defense. (Jennings v. Superior Court (1967) 66 Cal.2d 867.)

The court must consider the defendant's right to a fair trial. (People v. Courts (1985) 37 Cal.3d 784, 794; see also, People v. Murphy (1963) 59 Cal.2d 818.)

Ms.. HUCKABY respectfully requests this court to grant a continuance of the Motion to Suppress and calendar the matter for Hearing Setting the week of January 25, 2010.

DATED: January 21, 2010

OFFICE OF THE PUBLIC DEFENDER  
PETER FOX, Public Defender



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SAMUEL BEHAR,  
Deputy Public Defender  
Attorneys for Defendant