STATE OF WISCONSIN CIRCUIT COURT | BROWN COUNTY

In the Matter of the Return of Property
to Ronald Van Den Heuvel

Case No. 15CV1014
CLASS CODE: 30703

MOTION FOR RETURN OF PROPERTY

Ronald Van Den Heuvel, by his attorneys Michael J. Fitzgerald and Michael Steinle, pursuant to Wis. Stat. §968.20, moves the Court for an order returning to him all property taken in the execution of search warrants on July 2, 2015, at the following locations:

- 2077 Lawrence Drive, Suite A;
- 2077 Lawrence Drive, Suite B;
- 500 Fortune Avenue;
- 2107 American Boulevard;
- 2303 Lost Dauphin Road.

If the District Attorney contests any of the factual or legal grounds for this motion, Van Den Heuvel requests the immediate scheduling of an evidentiary hearing and briefing schedule.

I. INTRODUCTION

On July 2, 2015, the Honorable Donald Zuidmulder issued five search warrants for the following locations, which were "occupied, rented or owned" by Ron Van Den Heuvel (Exh. 1-5):

- 2077 Lawrence Drive, Suite A;
- 2077 Lawrence Drive, Suite B;

- 500 Fortune Avenue;
- 2107 American Boulevard;
- 2303 Lost Dauphin Road.

The 2077 Lawrence Drive location houses the offices of Van Den Heuvel's business, Green Box, as well as the offices of at least two other separate businesses. The building at 2107 American Boulevard is the address of Patriot Tissue, and 500 Fortune Avenue is the address for Eco Fibre. Van Den Heuvel is the majority owner of Green Box, Patriot Tissue and Eco Fibre (Exh. 21, ¶2). 2303 Lost Dauphin Road is Van Den Heuvel's home in the town of Lawrence.[1]

All five warrants were issued on the application of Sgt. Mary Schartner of the Brown County Sheriff's Department (Exh. 6).[2] The warrants authorized the seizure of a broad array of documents and computers, which were allegedly used in the commission of, or constituted evidence of the crime of theft under Wis. Stat. §943.20(1)(d) and securities fraud under Chapter 551 of the Wisconsin Statutes.

The warrants were executed on the same day that they were issued. Schartner and the other officers seized a vast amount of documents and numerous computers from these five locations, estimated to be five truck loads.

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[1] Judge Zuidmulder issued a sixth search warrant on July 2, 2015, for a multi-unit warehouse at 821 Parkview Drive in Ashwaubenon. Van Den Heuvel does not believe that any documents or computers were seized from that location. Accordingly, that warrant is not a part of this motion.

[2]Other than the description of the premises to be searched, the application appears to be substantially the same for all five warrants. Accordingly, only one application is included in the appendix (Exh. 6).

On September 30, 2015, the undersigned counsel sent a letter to the Brown County Clerk of Court requesting that Van Den Heuvel be provided with an inventory of items taken in the searches, as required by Wis. Stat. §968.17(1) (Exh. 12). The clerk responded in an undated letter in which he refused to provide the requested inventory because the search warrant files were under seal, per the order of Judge Zuidmulder (Exh. 13).

Shortly after that, in response to an open records request by the media, the warrants were unsealed. Van Den Heuvel has subsequently been provided with the inventories by the clerk.

This motion is brought pursuant to Wis. Stat. §968.20, which provides, in part, that "any person claiming the right of possession of property seized pursuant to a search warrant may apply for its return to the circuit court for the county in which the property was seized or where the search warrant was returned. So long as the property is not contraband, the Court shall order the return of the property if: (a) the property is not needed as evidence or, if needed, satisfactory arrangements can be made for its subsequent use as evidence, or (b) all proceedings in which it might be required have been completed."

There are no charges pending against Van Den Heuvel. A motion under Wis. Stat. §968.20 is the appropriate procedure for a person not charged with a crime to seek the return of property seized by the police. *See, e.g., Supreme Video v. Schauz*, 808 F. Supp. 1380 (E.D. Wis. 1990); *see also, State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, 363 Wis. 2d 1, 866 N.W.2d 165 (affirming John Doe judge's granting of motion for return

of property under Wis. Stat. §968.20 where no charges had been brought against the moving parties, who were subjects of investigation).

Van Den Heuvel brings this motion on the grounds that the search warrants were overbroad, and items were seized outside the scope of the warrants. Van Den Heuvel reserves the right to supplement this motion, or bring a separate motion, on the grounds that the search warrant application contained false statements and/or material omissions, in violation of *Franks v. Delaware*, 438 U.S. 154 (1978) and *State v. Mann*, 123 Wis. 2d 375, 367 N.W.2d 209 (1985). As noted, Van Den Heuvel only recently was able to obtain a copy of the search warrant application (when it was unsealed at the request of the media), and is in the process of investigating the veracity of certain statements made in the affidavit.

II. SUMMARY OF ARGUMENT

The search warrants issued by Judge Zuidmulder were overbroad on their face with respect to the seizure of documents, and the seizure and searching of computers. Any limitations on the face of the warrants were flagrantly disregarded by the officers executing the warrants. The overbroad warrants, along with the manner in which they were executed, constituted a general search in violation of the Fourth Amendment.

Because the warrants were overbroad and the officers acted in flagrant disregard of their terms, all evidence obtained pursuant to the execution of the warrants was obtained illegally by the police. Consequently, at no point in the future can the seized materials be used as evidence in any criminal proceeding.

Because the evidence was illegally obtained and cannot be used, and does not constitute contraband, pursuant to Wis. Stat. §968.20, it must be returned to Van Den Heuvel.

III. ARGUMENT

A. The search warrants were facially overbroad.

The core purpose of the Fourth Amendment is to protect against general searches. *State v. King*, 2008 Wis. App 129, 313 Wis. 2d 673, 758 N.W.2d 131. The Fourth Amendment prohibits the issuance of any warrant that does not describe the objects to be seized with particularity. *Maryland v. Garrison*, 480 U.S. 79, 84 (1987).

The particularity requirement of the Fourth Amendment prevents law enforcement officers from executing general warrants that permit an "exploratory rummaging" through a person's belongings in search of evidence of a crime. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). Thus, general warrants that do not adequately describe the items to be seized violate the Fourth Amendment. *Andreson v. Maryland*, 427 U.S. 463, 480 (1976) (citation omitted).

The particularity requirement has two distinct elements. *See United States v. Upham*, 168 F.3d 532, 535 (1st Cir. 1999). First, the warrant must describe the things to be seized with sufficiently precise language so that it tells the officers how to separate the items properly subject to seizure from irrelevant items. *See Marron v. United States*, 275 U.S. 192, 196 (1925) ("as to what is to be taken, nothing is left to the discretion of the officer executing the warrant"). Second, the description of the things to be seized must not be so

broad that it encompasses items that should not be seized. *See Upham*, 168 F.3d at 535. Put another way, the description in the warrant of the things to be seized must be limited to the scope of the probable cause established in the warrant. *See In Re: Grand Jury Investigation Concerning Solid State Devices*, 130 F.3d 853, 857 (9th Cir. 1997); *State v. DeSmidt*, 155 Wis. 2d 119, 131 (1990). Considered together, these two elements of the particularity requirement forbid agents from obtaining "general warrants" and instead require agents to conduct narrow searches that attempt to "minimize unwarranted intrusions upon privacy." *Andreson v. Maryland*, 427 U.S. at 482, n. 11 (1976).

The Fourth Amendment's particularity requirement fulfills three objectives. It prevents general searches, it prevents the issuance of warrants on less than probable cause, and it prevents the seizure of objects when the warrant describes different objects. *See, e.g. State v. Petrone*, 161 Wis. 2d 530, 468 N.W.2d 676, 679 (1991). As the court noted in *Petrone*, the particularity requirement is especially important when an item to be seized – such as business records and computers – is an item whose use is ordinarily legitimate. *Id.*

The inquiry is whether an officer executing the warrant would reasonably know what items are to be seized. *United States v. Hall*, 142 F.3d 988, 996 (7th Cir. 1998). "Warrants are conclusively invalided by their substantial failure to specify as nearly as possible the distinguishing characteristics of the goods to be seized." *United States v. Leary*, 846 F.2d 592, 600 (10th Cir. 1988) (citation omitted). The "[f]ailure to employ the specificity available will invalidate a general description in a warrant." *United States v. Cook*, 657 F.2d

730, 733 (5th Cir. 1981). The police must use caution when seeking authority to seize a broad class of information such as documents or computer data. *See, e.g., Leary*, 846 F.2d at 603, n.18 ("Search warrants for documents are generally deserving of somewhat closer scrutiny with respect to the particularity requirement because of the potential they carry for a very serious intrusion into personal privacy") (citation omitted).

In the present case, the list of items to be seized appears to be identical for all five search warrants (Exh. 1-5). The warrants contain no meaningful limitation on the documents, computers, and other items that could be seized. Virtually any document, file, record, or computer could be seized under the terms of the warrant if it may have constituted evidence of "theft" or "securities fraud."

The warrants authorized the seizure of ten categories of items as evidence of those two alleged offenses:

1. Computers and computer storage devices – without limitation;
2. Computer software – without limitation;
3. Items displaying computer passwords, access codes, user names and "other identifiers" – without limitation;
4. Any other digital storage device, such as cell phones, tablet devices and portable media players – without limitation;
5. "Papers," including but not limited to spreadsheets, binders, accounting ledgers – without limitation;
6. Microfiche files – without limitation;
7. "All business and financial records for organizations associated with Ron Van Den Heuvel" – the only limitation being "from December 31,

2010 to the present" (the warrant then lists thirty examples of the kinds of items that may be taken);

8. All tax returns – without limitation;
9. All schedule K-1's – without limitation;
10. All items that would "tend to show dominion and control of the property" – without limitation.

These expansive categories functioned as no limitation at all on the searches. The warrants authorized the seizure of virtually any document that the officers chose to take. The warrants authorized the seizure of any computer, computer device and computer related equipment that the officers chose to take. The warrants authorized the further searching of those computers, at the unfettered discretion of the officers, without limitation.

The only possible limitation on the face of the warrants is found in category 7 – "all business and financial records for organizations associated with Ron Van Den Heuvel from December 31, 2010 to the present." This date limitation, however, is rendered meaningless by the broad scope of the other categories.

For example, category 5 authorizes the seizure of all "papers," without limitation. Since "business records and financial records" are also "papers," the time frame limitation in category 7 is nullified by the authority to seize all "papers" pursuant to category 5.

These warrants are similar to a search warrant found to be overbroad in *United States v. Leary*, 846 F.2d 592 (10th Cir. 1988). In *Leary*, the warrant authorized the seizure of:

> Correspondence, Telex messages, contracts, invoices, purchase orders, shipping documents,

> payment records, export documents, packing slips, technical data, recorded notations, and other records and communications relating to the purchase, sale and illegal exportation of materials in violation of the Arms Export Control Act, 22 U.S.C. §2778 and the Export Administration Act of 1979, 50 U.S.C. App. 2410.

Id. at 594.

Twenty boxes of records were seized, including the defendant's personal financial information, his life insurance policy, and correspondence relating to other businesses not involved in the investigation. *Id.* The Tenth Circuit found that the warrant was overbroad, and violated the Fourth Amendment, for three reasons. All three reasons are applicable to this case.

First, the warrant was overbroad because it authorized a general search for evidence of a federal crime ("the Arms Export Control Act, 22 U.S.C. 2778 and the Export Administration Act of 1979, 50 U.S.C. App. 2410"). The court held that the mere citation to a broad criminal statute is not a sufficient limitation on a search warrant. *Id.* at 601. *See also, United States v. Cardwell*, 680 F.2d 75, 77 (9th Cir. 1982) (warrant overbroad where only limitation on the search and seizure of appellant's business papers was requirement that they be evidence of tax evasion under 26 U.S.C. §7201); *Rickert v. Sweeney*, 813 F.2d 907, 909 (8th Cir. 1987) (warrant limited only by references to the general conspiracy statute and tax evasion statute did not limit the search in any substantive manner); *United States v. Spilotro*, 800 F.2d 959, 965 (9th Cir. 1986) (effort to limit discretion solely by reference to criminal statute inadequate); *United States v. Abrams*, 615 F.2d 541, 542-43 (1st Cir. 1980)

(warrant limited only by reference to records and federal fraud statute is overbroad); *In re: Lafayette Academy*, 610 F.2d 1, 3 (1st Cir. 1979) (overbroad warrant allowed seizure of numerous documents, limited only by the qualification that the seized item be evidence of violations of certain statutes).

The warrant in the present case contains the same inadequacy. Without parameters as to alleged victims, dates and transactions, the warrant merely cites the theft by fraud statute, Wis. Stat. §943.20(1)(d), and the *entire* Chapter 551 of the Wisconsin Statutes – which is titled "Wisconsin Uniform Securities Law," not "Securities Fraud," as the warrant indicates. Chapter 551 covers all aspects of securities regulation in Wisconsin, the vast majority of which has nothing to do with criminal "securities fraud."

As stated in *Leary*, such a warrant does nothing to distinguish between items which may and may not be seized. An "unadorned reference" to a broad criminal statute does not sufficiently limit the scope of a warrant. *Id.* at 602.

Moreover, the *Leary* warrant listed virtually every kind of document that one might expect to find in a business, just as the warrants do in the present case. Such a "laundry list" of items is inadequate under the Fourth Amendment. *Id.* at 602-603.

The second defect in the *Leary* warrant was that information was available to the government to make the scope of the warrant more narrow. *Id.* at 604-605. The warrant could have been more limited with respect to the documents to be seized, and could have identified the criminal activity with more specificity than a mere citation to a statute. The

failure to do so invalidated the general description of items to be seized. *Id.* at 605 (citations omitted).

Here, the Van Den Heuvel warrants failed to particularly describe the alleged offense, citing only the theft by fraud statute and the entire chapter of the Wisconsin securities law. The warrants also fail to identify the alleged victims and transactions that the seized items should have been limited to – according to Schartner's affidavit, transactions involving Marco Araujo and the WEDC, for example (Exh. 6, ¶4-12; ¶8-11). Similar to *Leary*, a fair reading of the twenty-three page affidavit suggests that this limiting information was available and should have been included on the face of the warrant.

The third defect of the search warrant in *Leary* was that the scope of the warrant was not limited to the probable cause showing in the application. *Id.* at 605. The Fourth Amendment requires that the scope of the warrant be limited to the specific things for which the probable cause finding is based. *Maryland v. Garrison*, 480 U.S. 79 (1987). *See also, United States v. Bentley*, 825 F.2d 1104, 1110 (7th Cir. 1987) ("When the probable cause covers fewer documents in a system of files, the warrant must...tell the officers how to separate the documents to be seized from others").

Van Den Heuvel does not concede that there was probable cause for issuance of the search warrant, and reserves his right to make that argument, along with a *Franks* challenge. For the sake of argument, Van Den Heuvel submits that any probable cause showing in the

Schartner application was greatly exceeded by the almost limitless categories of items and documents that the warrant authorized the officers to take.

As noted, a significant portion of the affidavit focuses on allegations involving Araujo and the WEDC, yet no parameters are placed on the face of the warrant to limit the seizures to documents pertaining to those transactions, or even to the Green Box Green Bay, NA business that, according to the warrant application, obtained the WEDC loan and obtained $600,000 from Araujo. Instead, the warrant authorized the seizure of any document associated with any business owned or run by Van Den Heuvel, that "may constitute" evidence of theft or securities fraud.

In summary, the court in *Leary* found the search warrant to be invalid because it contained no limitation on the scope of the search, it was not as particular as the circumstances would have allowed, and it extended far beyond the scope of the supporting probable cause affidavit. The Court here should reach the same conclusion.

Additionally, the Van Den Heuvel warrants are equally overbroad as applied to any computer search. There is no limitation at all in the warrants as to the manner in which any seized computers may be searched, the items that may be seized from the computers, or even when the searches must be completed.

The rules of search warrant particularity apply equally to the search of computers and related devices, such as cell phones. In *Riley v. California*, 573 U.S ____, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014), the United States Supreme Court recognized the privacy interests

invoked by the search of cell phones – which are computers potentially containing significant amounts of information – and held that the police are required to obtain a search warrant before searching a cell phone's contents. *Id.*, 134 S. Ct. at 2485, 2488.

Recently, several magistrate judges in the federal system have had the opportunity to address the sufficiency of search warrant applications by the government for computers and cell phones. The magistrate judges in four cases denied the applications on particularity grounds because the application did not include a sufficiently detailed protocol explaining how the search of the devices would be conducted so as to limit the searches to the items authorized to be seized. *See, In the Matter of the Search of ODYS LOOX Plus Tablet*, 2014 WL 1063996 (D.D.C.); *In the Matter of the Search of Apple iPhone*, 2014 WL 1239702 (D.D.C.); *In the Matter of the Search of premises known as a Nextel Cellular Telephone*, 2014 WL 2898262 (D. Kan.); *In the Matter of the Search of the premises known as Three Cellphones and One Micro-SD Card*, 2014 WL 3845157 (D. Kan.); *see also United States v. Comprehensive Drug Testing, Inc.*, 579 F.3d 989 (9th Cir. 2009) (requiring detailed computer search protocol and procedures to be set forth in the search warrant).

The Van Den Heuvel warrants contain no protocol for computer searches or any limitation on the computer searches, except for the overly broad categories of documents to be seized. Consequently, this is an additional reason that the warrants are unconstitutional general warrants, and that all evidence seized pursuant to their execution must be returned.

B. The police flagrantly disregarded the scope of the warrants.

Whatever limitations this Court might find on the face of the warrants – and Van Den Heuvel does not concede there were any of substance – were flagrantly disregarded by the officers who executed the warrants. In effect, the warrants served as no limitation at all on what was seized. The evidence will show that the police conducted a general, exploratory search of each location.

Indeed, Schartner acknowledged that she decided to cast "a wide net" (Exh. 22, ¶13). This meant that even persons who were not named in the warrant at all, like Jeremy McGown, had his property taken because he was associated with "a crook like Ron Van Den Heuvel," not because it was authorized by the warrants (Exh. 22; ¶12).

When the police flagrantly disregard the terms of a search warrant, as they did here, none of the evidence seized can be used by the prosecution. *State v. Pender*, 2008 WI App 47, ¶9, 308 Wis. 2d 428, 748 N.W.2d 471; *State v. Rindfleisch*, 2014 WI App 121, ¶22, 359 Wis. 2d 147, 857 N.W.2d 456.

1. Seizures from 2077 Lawrence Drive, Suites A and B – Green Box Offices

The search warrant inventories alone establish the expansive scope of seizures from the Green Box offices (Exh. 7, 8). Although the inventories contain only a general description of the items seized, they can be summarized in the following categories:

- 495 boxes of documents;
- 7 bags of evidence;

- 32 file cabinets;
- 54 plastic totes of documents and records.

Additionally, every computer hard drive was physically removed from the premises, as was the server (Exh. 21, ¶7; Exh. 22, ¶10).

Phil Reinhart, the Green Box Human Resources Director, has attempted to reconstruct what was taken from the Green Box offices in the search. His affidavit outlines items that were taken outside the scope of the warrant (Exh. 21):

- virtually all paperwork, binders, documents and file cabinets from both office suites. Reinhart estimates that approximately sixty to eighty boxes of materials were seized with respect to documents that pre-date January 1, 2010;
- approximately eight file cabinets of intellectual property-related documents dated prior to January 1, 2010;
- numerous licenses held by Van Den Heuvel, all issued prior to January 1, 2010;
- white boards (physically removed from the premises) and drawings;
- all closing documents related to Oconto Falls Tissue from 2007;
- personal letters written during the World War II era by Van Den Heuvel's father, who was stationed overseas, to Van Den Heuvel's mother;
- Van Den Heuvel family photographs;
- EPA diesel sediment samples;
- biofuel samples;
- tire to oil samples;

- sugar to ethanol samples;
- pellet samples;
- cellulose to sugar samples;
- all Green Box computers including the server and backups to the system from both suites;
- numerous personal and work cell phones and personal computers taken from Green Box employees, and from non-Green Box businesses with offices there;
- Reinhart's personal papers, including business cards (both personal and professional), personal bills (WPS bill for my home, his daughter's student loans, credit card, water bill, etc.) and financial banking information (two personal checkbooks) from a personal binder in his office that were taken when he was allowed to return to his office escorted by the officers to retrieve his personal items.

Additionally, Reinhart also summarizes the evidence taken from his own office:

- past and current Green Box employee handbooks;
- all personnel files for past and current employees. This includes federal and state tax forms, contact information, performance reviews an any disciplinary activities, all benefit enrollment forms and/or changes, applications/resumes, employee contracts and compensation agreements, social security number, etc. HIPPA issues;
- blank new hire packets that are given out to any new hires on their first day of employment;

- health and dental benefit enrollment packets provided by UHC and Guardian with the company's plan details and coverage information;
- all 401K blank new enrollment packets given to all employees upon meeting the eligibility criteria for the company plan;
- past and current company insurance policies and proposals;
- all updated job descriptions and associated pay rates documentation;
- all current and past OSHA logs for operations which our company is required to have on hand at all times to be in compliance with OSHA regulations;
- all SOP (standard operating procedures) documents for Green Box operations and training manuals for various positions;
- all MSDS (Material Safety Data Sheet) for operations, as required by OSHA for any manufacturing facility where chemicals are present.

As Reinhart points out, all Green Box computer hard drives were physically removed from the premises, as was the main server (Exh. 21, ¶7). Additionally, numerous individuals had their personal phones, iPads, and laptops taken.

On July 28, 2015, several of those individuals filed their own motion for return of property. *See, In re: Ty Willihnganz, et al.*, Brown County case no. 15-CV-1066. The motion remains pending. It was brought by four Green Box employees (Savannah Brault, Mike Garsow, Nancy Van Lanen, Meng Qiao), a lawyer who maintains a separate law practice with offices at 2077 Lawrence Drive, Suite B (Ty Willihnganz), and the owner of

a separate information technology business, Evolve MTS, LLC, who has an office there as well (Jeremy McGown). Copies of the affidavits of those individuals filed in their motion for return of property are included in the appendix to this motion, and are incorporated herein (Exh. 15-20).

When one of those employees, Brault, tried to explain to an officer that her laptop was only for personal use, the officer responded that they were taking "all electronic equipment on the Green Box premises" (Exh. 21, ¶10). Another officer told Reinhart that the officers would take all electronic and paper files in both suites (Exh. 21, ¶11).

Reinhart was also told by an officer that "there will be nothing left for your employees to do when we are done. Companies do not recover when we are done" (Exh. 21, ¶12). Consistent with that statement, the police physically removed the Green Box computers from the premises, rather than copying them (Exh. 21, ¶7; Exh. 22, ¶10). As is now common in searches involving computers, the officers clearly had the ability to copy or mirror the hard drives of those computers. As Reinhart points out, the officers did that very thing with respect to the computers at Patriot Tissue and at Eco Fibre (Exh. 21, ¶13-14).

Not only were the Green Box computers removed, the Green Box data and phone lines were disabled by the police. Those lines had to be repaired by a TDS technician (Exh. 21, ¶8).

It was not necessary for the police to physically remove all hard drives from the Green Box computers, take the server, seize employees personal computers and devices, and disable data and phone lines, nor were those actions authorized by the search warrant.

2. Seizures from 2107 American Boulevard and 500 Fortune Avenue.

The inventory provided by the clerk for the search of 2107 American Boulevard lists eleven file boxes of documents taken, another miscellaneous file box, and "samples of oils/chemicals" (Exh. 10).

No more specific description of these items is provided. Van Den Heuvel will need to inspect these boxes to determine what, if anything, falls within the scope of the search warrant. It should be noted that the warrant did not authorize the police to take oil or chemical samples (Exh. 4).

Moreover, as established in the Reinhart affidavit, the police copied the hard drives of the computers at this location (Exh. 21, ¶14). No inventory or other record has been provided with respect to the documents and information taken from these computers by the police. These computers hold a significant amount of data, much of which potentially falls outside the scope of the warrant.

The inventory provided by the clerk for the search of 500 Fortune Avenue indicates only a "thumb drive of photos and or video taken of machinery and contents of warehouse" (Exh. 3).

Additionally, the inventory indicates "[s]ee attached list for additional seized items found and in custody." No such list is attached to the inventory, at least with respect to the copy provided to Van Den Heuvel by the clerk.

Again, the Reinhard affidavit establishes that the computers were copied at this location by the police (Exh. 21, ¶13). No inventory or record of the searches of these computers has been provided, potentially involving a significant amount of information outside the scope of the warrant.

Van Den Heuvel submits that this motion can and should be granted on the basis of the general searches of 2077 Lawrence Drive, Suites A and B, and the Van Den Heuvel home. Van Den Heuvel reserves the right to supplement this argument when and if he is provided with additional information regarding the scope of seizures from 2107 American Boulevard and 500 Fortune Avenue, both in terms of physical objects and documents taken, as well as the result of computer searches.

3. Seizure of items from the Van Den Heuvel home, and from Van Den Heuvel's office

The scope of items seized from the Van Den Heuvel family, including Van Den Heuvel's wife and minor children, from their home and from Van Den Heuvel's office was beyond any reasonable interpretation of the terms of the search warrant. Nothing could be more indicative of a general search, or of conduct flagrantly in disregard of the terms of the search warrant.

Because the documents and information seized are confidential and subject to HIPAA and related state privacy laws, Van Den Heuvel requests that the Court allow that affidavit (outlining what was seized) to be filed under seal. Along with this motion, Van Den Heuvel is filing a separate motion to seal that document.

IV. CONCLUSION

The police in this case obtained an extremely broad warrant that authorized the seizure of virtually every document, record, computer and device located on the premises to be searched. Any arguable limitation on the face of those warrants was flagrantly disregarded by the police in executing them.

The consequence of a general search such as this, including the flagrant disregard of the warrant and of the Fourth Amendment, is a finding that all of the evidence was obtained illegally from the five locations. *See*, *Pender*, 2008 WI App 47, ¶9 (citation omitted); *Rindfleisch*, 2014 WI App 121, ¶22.

As noted, Wis. Stat. §968.20 requires the return of property taken pursuant to issuance of a search warrant if the property is not contraband and it is no longer needed as evidence. For the reasons stated in this motion, the Court should now find these searches to have been illegal under the Fourth Amendment. Consequently, the exclusionary rule would require the suppression of all evidence obtained in these searches in any future legal proceeding. *See, Mapp v. Oho*, 367 U.S. 643 (1961); *State v. Felix*, 2012 WI 36, 339 Wis. 2d 670, 811 N.W.2d

775 (2012). Thus, under Wis. Stat. §968.20, all of the evidence seized is not and cannot be needed in any future proceeding.

The Court should order: (1) that all evidence obtained in the execution of these warrants be returned to Van Den Heuvel, (2) that no law enforcement agency (local, state or federal) or prosecutorial authority (state or federal) be allowed to retain copies of this evidence, and (3) that no law enforcement agency or prosecutorial authority be allowed to make any further investigative use of this evidence, including any and all fruits and leads derived from it.

Dated at Milwaukee, Wisconsin this 24th day of November, 2015.

Respectfully submitted,

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