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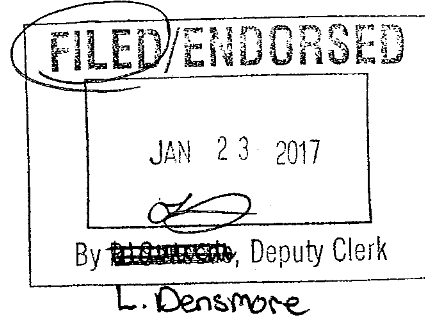

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. **CARL FERRER (DOB 03/16/1961)** **MICHAEL LACEY (DOB 07/30/1948)** **JAMES LARKIN (DOB 06/16/1949),** Defendant.	Case No. 16FE024013 **PEOPLE'S OPPOSITION TO DEFENDANTS' MOTION TO ENFORCE COURT ORDER OF DISMISSAL, DEMURRER, TRANSFER TO JUDGE BOWMAN, AND FOR FURTHER RELIEF** Date: 1/24/17 Time: 10:30 Dept: 8

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I. INTRODUCTION

The Defendants own and operate the leading online market place for commercial sex, widely known as a hub for human trafficking and particularly the trafficking of children. The instant prosecution is based on the Defendants' culpability for laundering criminal proceeds in California and profiteering from commercial sex. While a previous case against the Defendants was dismissed, nothing in the dismissal of the prior complaint prevents the People from filing a new action which includes new charges based on new evidence. This complaint charges the Defendants with 26 counts of money laundering and conspiracy to commit money laundering, charges which were never previously alleged. While the People certainly intend to prove those counts based on Defendants' underlying acts of pimping, the People will also prove money laundering based on Defendants' acts of fraud. Defendant's demurrer should be overruled because the Communications Decency Act (CDA), 47 U.S.C. § 230, does not apply to money laundering and does not bar the instant filing.[1] While the CDA provides limited immunity to internet providers from liability for material posted on the website by someone else, the CDA does not protect the Defendants in the present case because (1) the CDA is not a defense to money laundering, (2) the CDA does not shield internet providers from state criminal liability, and (3) the CDA does not protect internet providers when they develop content, violate intellectual property laws, or defraud financial institutions.

II. ARGUMENT

A. The People properly exercised discretion in filing new and different charges against the Defendants

1. The People are permitted to file the instant case

[1] Shortly after Judge Bowman sustained the demurrer in which he invited Congress to weigh in on the issue, the United States Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, issued a scathing report from its investigation in to Backpage.com finding that Backpage knowingly concealed evidence of criminality by systematically editing its "adult" ads, Backpage knows that it facilitates prostitution and child sex trafficking, and despite the reported sale of Backpage to an undisclosed foreign company in 2014, the true beneficial owners of the company are James Larkin, Michael Lacey, and Carl Ferrer. [http://www.portman.senate.gov/public/index.cfm/files/serve?File_id=5D0C71AE-A090-4F30-A5F5-7CFFC08AFD48].

On December 23, 2016, the People filed Case No. 16FE24013, charging the Defendants with conspiracy to commit money laundering, 26 substantive counts of money laundering, and conspiracy to commit pimping. Counts 29 through 40 charge Defendant Ferrer with pimping a minor and pimping. Defendants seek to link this complaint to a previous complaint in Case No. 16FE019224, which was dismissed by Judge Bowman, however, the dismissed complaint was substantially different. While the Defendants repeatedly claim that the previous complaint was dismissed "with prejudice" such a ruling was never made. Not only does the current complaint cure any alleged defects in the pimping charges, it contains primarily new charges that have never been alleged before. This current complaint, like any other, should be evaluated based on its four corners.

The granting of a demurrer does not bar the prosecution from filing a new complaint, even where the charges are the same. "It is, of course, the rule in this state that the magistrate's order dismissing a felony complaint is not a bar to another prosecution for the same offense, either by filing a subsequent complaint [citations], or by seeking a grand jury indictment [citations]. Even a dismissal in the superior court following an order setting aside an information or indictment is no bar to a future prosecution for the same offense." (*People v. Uhlemann* (1973) 9 Cal.3d 662, 666; Penal Code[2] § 999; see also § 1387.) Section 1387 "is sometimes loosely described as establishing a two-dismissal rule." (*People v. Hatch* (2000) 22 Cal.4th 260, 270, *citing People v. Superior Court* (1993) 19 Cal.App.4th 738) and provides in relevant part: "An order terminating an action pursuant to this chapter, or [s]ection 859b, 861, 871, or 995, is a bar to any other prosecution for the same offense if it is a felony...and the action has been previously terminated pursuant to this chapter, or [s]ection 859b, 861, 871, or 995, ..." Notably, under section 1387, a sustained demurrer is not even considered as a dismissal "terminating an action." (*See People v. Mimms* (1988) 204 Cal.App.3d 471, 480-481 stating that a demurrer is not a dismissal under section 1387 and noting that "a second complaint could be refiled;" (See also *Casey v. Superior Court* (1989) 207 Cal.App.3d 837, 844-845.) "Because [section] 1387 refers to dismissals under

[2] All statutory references are to the Penal Code unless otherwise indicated.

specified statutes, it presumably does not apply to a dismissal made on nonstatutory grounds [citation].' [Citation.]" (*Berardi v. Superior Court* (2008) 160 Cal.App.4th 210.)

In other words, section 1387 lists several situations where a dismissal can bar re-filing. That list does not contain a sustained demurrer. Importantly, all the listed grounds barring re-filing occur at much more advanced stages of the criminal proceedings. It would be incongruous to allow re-filing after a case was dismissed post-preliminary hearing, yet not allow a re-file when the case is dismissed before the defendants are even arraigned on a complaint. Likewise, section 1385(a) states that a court cannot dismiss for grounds upon which a defendant can demur, thereby specifically extricating demurrers from the type of dismissals that can bar re-filing.

The Legislative History of the demurrer statutes also supports this interpretation. Former section 1008 (now section 1009) initially included a bar provision. From its enactment in 1872 to 1927, section 1008 specifically stated that a sustained demurrer to an indictment or information acted as a bar to subsequent prosecution. (*See* Stats.1911, c. 257, p. 436, § 1.) In 1927, the Legislature amended section 1008 to remove the bar language, suggesting that the Legislature no longer intended a sustained demurrer to bar future prosecution. (*See* Stats.1927, c. 608, p. 1040, § 1) As the Supreme Court noted in *Mosk v. Superior Court* (1979) 25 Cal.3d 474, 493, "Generally, a substantial change in the language of a statute or constitutional provision by an amendment indicates an intention to change its meaning."

Although Defendants specifically asked to have the complaint in the previous case dismissed with prejudice, Judge Bowman's order does not state that the dismissal was granted with prejudice. Neither the law nor the order support the Defendant's position. Moreover, the current complaint is substantially different than that which was dismissed. Accordingly, the People should be permitted to file the instant complaint.

2. The People filed the instant complaint in good-faith

Without citation to relevant law and replete with factual misrepresentations, Defendants accuse the People of filing the instant complaint in bad-faith and based on a "vendetta." The People properly exercised discretion in charging the Defendants.

"It is well settled that the prosecuting authorities, exercising executive functions, ordinarily have the sole discretion to determine whom to charge with public offenses and what charges to bring. [Citations.] This prosecutorial discretion to choose, for each case, the actual charges from among those potentially available arises from '"the complex considerations necessary for the effective and efficient administration of law enforcement."' [Citations.] The prosecution's authority in this regard is founded, among other things, on the principle of separation of powers, and generally is not subject to supervision by the judicial branch. [Citations.]" (*People v. Birks* (1998) 19 Cal.4th 108, 134; *see e.g., Wayte v. United States* (1985) 470 U.S. 598, 607, [subject only to constitutional restraints, prosecutors retain broad discretion in deciding whom to prosecute].)

Before trial, the state's charging discretion is at its height. "While preparing for trial, new information may be discovered, the significance of possessed information may be realized and the proper extent of prosecution will crystallize." (*Barajas v. Superior Court* (1983) 149 Cal.App.3d 30, 34.) "In contrast, once a trial begins—and certainly by the time a conviction has been obtained—it is much more likely that the state has discovered and assessed all the information against an accused and has made a determination, on the basis of that information, of the extent to which he should be prosecuted." (*United States v. Goodwin* (1982) 457 U.S. 368, 381.) "Thus, a change in the charging decision made after an initial trial is completed is much more likely to be improperly motivated than is a pretrial decision." (*Ibid.*) At that point, prosecutors' charging discretion decreases and judicial scrutiny increases. In other words, judicial oversight of the state's charging discretion reaches its apex after a conviction is overturned on appeal and the matter is set for retrial, especially in a capital case. (*See Blackledge v. Perry* (1974) 417 U.S. 21, 27–28; *Goodwin, supra*, 457 U.S. at pp. 376–377; *In re Bower* (1985) 38 Cal.3d 865, 877.)

In *People v. Valli* (2010) 187 Cal.App.4th 786, a case relied on by defendants, the court declined to find vindictiveness where the prosecution filed new charges following an acquittal even though the charges were based on evidence that was presented at the defendant's previous trial. "We will not apply a presumption of vindictiveness to a subsequent criminal case where the basis for that case is justified by the evidence and does not put the defendant twice in jeopardy.

1 Such a presumption is tantamount to making an acquittal a waiver of criminal liability for conduct
2 that arose from the operative facts of the first prosecution. It fashions a new constitutional rule
3 that requires prosecutors to bring all possible charges in an indictment or forever hold their peace.
4 [Citation.] We reject such a proposition for it undermines lawful exercise of discretion as well as
5 plain practicality." (*Id.* at 804-805, quoting *United States v. Esposito* (3d Cir.1992) 968 F.2d 300,
6 306.)

7 Here, the People's investigation continues. The United States Senate released a report on
8 January 9, 2017 concluding that "Backpage has knowingly concealed evidence of criminality by
9 systematically editing its "Adult" ads." [http://www.hsgac.senate.gov/download/backpagecoms-
10 knowing-facilitation-of-online-sex-trafficking] The People are still receiving and evaluating
11 evidence obtained via both search warrant and subpoena. This evidence has and should inform
12 the proper scope of criminal prosecution. While not statutorily obligated to do so at this stage,
13 the People have provided over 500,000 pages of discovery to the Defendants at their request. The
14 People have also notified the Defendants of existing search warrants pursuant to section 1524.2
15 subdivision (a). As the Defendants know from the dates of these notifications and warrants, new
16 evidence is still being obtained and analyzed by the People. When the People filed the instant
17 action, the People notified counsel of the filing, rather than seeking an arrest warrant. When
18 counsel communicated that they were unavailable for the calendared arraignment date, the People
19 agreed to a continuance to accommodate the schedules of the defense team. The People's actions
20 are not consistent with harassment. The complexity of the Defendants' schemes and voluminous
21 nature of the evidence has impacted the timing of the investigation and prosecution. Filing a
22 criminal complaint with new charges at this early stage in the proceedings constitutes a proper
23 exercise of prosecutorial discretion.

24 While the Defendants cite *Dombrowski v. Pfister* (1965) 380 U.S. 479 and *White v. Lee*
25 (2000 9th cir.) 227 F.3d 1214 for the proposition that criminal prosecution cannot threaten the
26 exercise of First Amendment rights, they fail to show how any "protected speech" is implicated
27 by the instant charges. They stand accused of laundering money through a variety of schemes,
28

conspiracy, and pimping. These crimes are based on criminal conduct, and are not protected by the First Amendment.

The filing of this new criminal case against the Defendants is done in good faith because it is the result of acquiring new financial evidence that traces the proceeds of illegal commercial sex from the bank accounts of pimps and prostitutes, into the Defendants' bank accounts. Subsequent investigation also revealed the ways in which the Defendants manipulated and defrauded financial institutions so the Defendants could continue to receive and move proceeds. Based on this new evidence, it is within the sound discretion of the Office of the Attorney General to file new money laundering charges.

B. The Communications Decency Act does not bar this prosecution

The Defendants argue that they are immune from prosecution and therefore neither this, nor any other criminal complaint against them can go forward. However, no such immunity exists, and the complaint must be judged on its four corners. In considering whether to grant the Defendants' demurrer, the sole question before the court is the adequacy of the pleading. Criminal defendants may not use a demurrer to attack the sufficiency of evidence (*People v. Biane* (2013) 58 Cal.4th 381, 388.) A demurrer solely serves to test "whether the pleading is facially—not factually—deficient..." and extrinsic evidence must not be considered by the magistrate in ruling on the demurrer. (*People v. Jimenez* (1993) 19 Cal.App.4th 1175, 1177, fn. 3, italics in original.) Here, without pointing to any deficiency in the new complaint, the Defendants state that the complaint "is subject to demurrer dismissal under Penal Code § 1004 on the same bases that the Court sustained the demurrer to the original complaint." (Motion to Enforce Court's Order of Dismissal p. 2) Defendants ignore the fact that the new complaint is substantially different, and fail to argue any defect or bar apparent from the face of the complaint.

1. The Communications Decency Act is not an all-purpose get out of jail free card

The Communications Decency Act of 1996 (CDA) was created to balance First Amendment and e-commerce interests while also protect children on the internet. (*Reno v. American Civil Liberties Union* (1997) 521 U.S. 844, 868; "The CDA"; 47 U.S.C. § 230(c);

Batzel v. Smith (9th Cir. 2003) 333 F.3d 1018, 1028.) Generally, the CDA protects websites "from liability for material posted on the website by someone else." (*Doe v. Internet Brands, Inc.* (9th Cir. 2016) 824 F.3d 846, 850.) However, CDA does not provide "an all purpose get-out-of-jail-free card" for internet-based actors ..." (*Internet Brands, supra,* 824 F.3d at p. 853; *Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC* (9th Cir. 2008) 521 F.3d 1157, 1171, quoting § 230(f)(3).) And, Congress did not declare a general immunity from liability deriving from third-party content. (*Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1100; see generally *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 39-40, 62; *People v. Bollaert* (2016) 248 Cal.App.4th 699,709.)

In the present case, there are multiple reasons why CDA does not bar criminal prosecution. First, the CDA does not apply to money laundering. Second, the CDA does not shield internet providers from state criminal liability. Third, the CDA does not protect internet providers when they develop content or violate intellectual property laws.

2. The CDA does not protect the Defendants for engaging in money laundering or fraud because federal and state laws are consistent and because their fraud was independent of their publisher functions

Money laundering charges fall outside the preemption provisions of the CDA. Section 230(e)(1) expressly provides that nothing in the CDA shall be construed to impair the enforcement of "any. . . Federal criminal statute." Subdivision (e)(3) provides in relevant part that "[n]othing in this section shall be construed to prevent any state from enforcing and state law that is consistent with this section." Construing these provisions together, it follows that if the federal government could enforce a given criminal statute, then the state could enforce a substantially similar and consistent state criminal statute. Money laundering is one such situation in which state and federal laws are substantially similar. Thereby placing state money laundering charges outside the immunity provisions of the CDA.

California's money laundering statute provides in relevant part:

"Any person who conducts or attempts to conduct a transaction or more than one transaction within a seven-day period involving a monetary instrument or instruments of a total value exceeding five thousand dollars ($5,000), or a total value exceeding twenty-five thousand

dollars ($25,000) within a 30-day period, through one or more financial institutions (1) with the specific intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, or (2) knowing that the monetary instrument represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity, is guilty of the crime of money laundering." (*Pen. Code*, § 186.10, subd. (a).)

"Criminal activity," as defined for purposes of money laundering, includes not only a criminal offense punishable under the laws of this state, but also "a criminal offense committed in another jurisdiction punishable under the laws of that jurisdiction by death or imprisonment for a term exceeding one year." (*Pen. Code*, § 186.9, subd. (c).)

Federal law, on the other hand, has two money laundering provisions: 18 U.S.C sections 1956 and 1957. Section 1956 is similar to the first means of violating Penal Code section 186.10, subdivision (a), based on the intent to promote unlawful activity, except that California's statute includes an additional requirement regarding the minimum amount of the transaction. (*People v. Mays* (2007) 148 Cal.App.4th 13, 28.) For purposes of the present case, where the People have elected to proceed on the basis of section 186.10, subdivision (a)(2), 18 U.S.C. section 1957 is the relevant federal provision.

Section 1957 provides in relevant part:

"(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b)."

Wire fraud is committed by anyone who "having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice. . . ." (18 U.S.C. § 1343.)

Defendants conducted thousands of financial transactions moving millions of dollars that they knew represented the proceeds of illegal prostitution. As time went on, various financial

institutions began refusing to do business with Backpage. To trick and defraud those financial institutions, Defendants undertook a variety of actions to conceal the identity of Backpage as the recipient of credit card transactions. The evidence will show that Defendants dealt directly with the financial institutions, not through their webpage. More importantly, it was Defendants themselves who committed and conspired to defraud the financial institutions to keep the money flowing into their bank accounts. They did not undertake such actions as publishers of third party speech, and are thereby not entitled to any publisher immunity under CDA.

Because money laundering charges in counts 1 through 28 could all have been charged in federal court without running afoul of the CDA (see 47 U.S.C. § 230(e)(1)), it follows that there is nothing inconsistent with allowing the state, as a separate sovereign, to do the same.

3. The CDA does not preempt state criminal laws

Even aside from the specifics of the money laundering provisions, the CDA does not apply more generally because it does not preempt state criminal law at all. That is clear from the text, structure, history, and purpose of Section 230.

Our Supreme Court has emphasized that "[t]here is a presumption against federal preemption in those areas traditionally regulated by the states: '[W]e start with the assumption that the historic police powers of the states were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" (*Viva Intern. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 938, quoting *Rice v. Santa Fe Elevator Corp.* (1947) 331 U.S. 218.) The enforcement of general criminal law is an area of traditional state regulation under the states' historic police powers, as is the enforcement of prohibitions on pimping and prostitution. The CDA does not reveal any "clear and manifest purpose" to displace such state regulation.

By its plain text, section 230 was focused on preventing certain types of *civil* liability, and had no intention to displace state *criminal* law. In section 230(e),"Effect on Other Laws," the first subsection is titled "No effect on criminal law." (47 U.S.C. § 230(e)(1).) That subsection ultimately deals with "Federal criminal statute[s]." (*Ibid.*) In subsection (e)(3), the Act turns to state law, providing first that "Nothing in this section shall be construed to prevent any state from

enforcing any state law that is consistent with this section." That savings clause on its face includes state criminal laws: State prosecutions must be consistent with section 230, because subsection (e)(1) makes clear that the new federal statute was to have "[n]o effect on criminal law."

Finally, the history and purpose of section 230 confirm this conclusion. The purpose of section 230 had nothing to do with immunizing service providers from state criminal enforcement. Instead, the section was aimed at an entirely different goal: removing any disincentive that *civil* law might otherwise impose on providers' creation of tools for parents to shield children from objectionable material. The Conference Report on the legislation that enacted the provision explains that section 230 was added to the final bill as a House amendment that would "protect from *civil* liability those providers and users of interactive computer services for actions to restrict or to enable restriction of access to objectionable online material." (Telecommunications Act of 1996, H. Conf. Rep. No. 104-458, at 173 (1996) (emphasis added).) The text, structure, history, and purpose of section 230 therefore provide no sound basis for the proposition that section 230 precludes any state criminal prosecution.

4. Because Defendants created or developed content, violated intellectual property law, and defrauded financial institutions, their conduct is expressly excluded from CDA protection

Defendants' conduct in violating the victims' intellectual property rights and creating and developing offensive content place them outside of the CDA's protection. (47 U.S.C. § 230(e)(2); *People v. Bollaert* (2016) 248 Cal.App.4th 699; *Fair Housing Council of San Fernando Valley v. Roommates.Com* ("Roommates") (9th Cir. 2008) 521 F.3d 1157.) While the People recognize that Judge Bowman rejected this argument, it is a factual question that should be resolved following a preliminary hearing or other evidentiary hearing. The People's allegations must be assumed true at the demurrer phase, and as currently charged, the allegations state that the Defendants developed content and created profiles for victims without their knowledge, in violation of intellectual property law. (See Complaint overt acts 15-19.)

Moreover, the People allege multiple counts of money laundering, not prefaced on any publisher function.

In the only controlling case which addresses this issue, the Court of Appeal recently concluded that the CDA did not immunize a website administrator from criminal liability where offensive content was posted by third parties on his site. (*Bollaert, supra*, 248 Cal.App.4th at pp. 717-722.) The defendant created a website on which users posted naked and compromising photos of others for the purpose of embarrassing them. The website was specifically designed to require that the posters' personal identifying information be included before a submission could be accepted, thereby violating their privacy rights. These facts constituted sufficient evidence that the defendant assisted in developing the offensive content in whole or part, and therefore was an information content provider not immunized by the CDA. (*Id.* at p. 722.) Importantly, the complaint was not dismissed by the court at the demurrer phase just because the defendant was the owner of a website and used the website to conduct his crimes. Instead, the applicability of the CDA was an affirmative defense, which was ultimately rejected by the jury.

Here, the CDA should not bar the prosecution from proving its case. If applicable at all, the CDA should be raised as an affirmative defense, which the People can disprove by showing how the Defendants developed content and violated the privacy and publicity rights of the victims. The current complaint sufficiently alleges not only the charges against the Defendants, but overt acts which if proven remove the Defendants from CDA protection. Moreover, the new charges reflect that the Defendants laundered money and defrauded financial institutions. This conduct is not protected by the CDA as a publisher function.

C. This Court Should Deny Defendant's Other Special Requests

The People oppose Defendants' special requests to unilaterally select the judge, enjoin the prosecution from investigating and developing its case, and to return lawfully obtained evidence relevant to ongoing investigations. These special requests have no support in law, significantly impact the People's ability to investigate and prosecute ongoing sex trafficking and money laundering related charges, and the evidence obtained was either obtained from third parties, or was obtained by other investigative entities not subject to the jurisdiction of this Court.

Defendants request to select the judge of their choice for purposes of hearing this motion. This criminal matter should be assigned like any other criminal matter filed within Sacramento County. Sacramento County Superior Court local rule 10.32 regarding Pre-Assignment Requests, provides in relevant part that, "Counsel may move the Presiding Judge to assign a case to a trial judge for all purposes based on complexity of issues or scheduling. The motion must be joined by all parties, with express approval of the supervisor of each assigned counsel, if applicable, and must state the particular need for such assignment...[emphasis added]." Even under this local rule, the parties do not have the authority to pick the particular judge or department as judicial assignments are made by the court. The People submit to this Court's authority to evaluate the instant matter and determine whether its complexity warrants special assignment.

Until this case is final on appeal, the prosecution has an obligation to continue to investigate the Defendants' violations of law. It is vital that the People be permitted to utilize the tools, evidence, resources, and investigative mechanisms to perform this vital function for the safety of those who were, and continue to be victimized by the Defendants' crimes.

This Court should also reject the Defendants' request to order the People to return evidence because the evidence is related to ongoing criminal charges. Moreover, the only evidence seized from the Defendants was seized pursuant to non-California warrants, by agencies outside of California that are beyond the scope of this Court's jurisdiction. California law enforcement is not in possession of this original evidence.

As for the evidence seized via California search warrant from third parties, a criminal court can order the return of non-contraband property seized by law enforcement when no longer needed as evidence. (See, e.g., *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 714 ["the superior court possesses the inherent power to conduct proceedings and issue orders regarding property seized from a criminal suspect pursuant to a warrant issued by the court"]; *People v. Lamonte* (1997) 53 Cal.App.4th 544. "When property is seized pursuant to warrant, the property must be retained in the custody of the officer, subject to order of the court in which the warrant is returnable or the offense relating to the property is triable. (§ 1536.) An officer who seizes property under a search warrant does so on behalf of the court for use in a judicial proceeding."

(*Ensoniq Corp. v. Superior Court* (1998) 65 Cal.App.4th 1537, 1546, footnote omitted.) Here, because criminal charges are pending, and all legal remedies have not yet been exhausted, it would be premature to return seized evidence.[3] The Defendants' special request to return all property should therefore be denied.

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[3] While a criminal defendant may also move for return of property before trial on the ground the seizure was unreasonable, the Defendants have not brought a section 1538.5 motion.

III. CONCLUSION

Accordingly, the People respectfully submit that this Court overrule the demurrer and decline the Defendants' special requests.

Dated: January 23, 2017

Respectfully Submitted,

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Acting Attorney General of California

MAGGY KRELL
Supervising Deputy Attorney General
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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **People of the State of California v. Carl Ferrer, Michael Lacey, James Larkin**
No.: **16FE024013**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On January 23, 2017, I served the attached **PEOPLE'S OPPOSITION TO DEFENDANTS' MOTION FOR DISMISSAL** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

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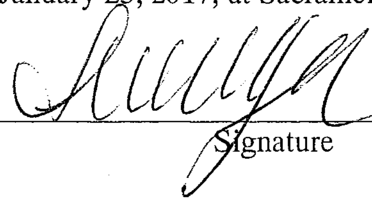
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 23, 2017, at Sacramento, California.



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Declarant

Signature

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