

1 DAN SIEGEL, SBN 56400
JOSE LUIS FUENTES, SBN 192236
2 SIEGEL & YEE
3 499 14th St, Suite 220
Oakland, California 94612
4 Telephone: (510) 839-1200
Facsimile: (510) 444-6698

5 Attorneys for Subpoenaed Party
6 JOSHUA WOLF

7
8
9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 In re GRAND JURY SUBPOENA
13 dated February 1, 2006 and June 8, 2006

No. CR 06-90064 MISC MMC

**SUBPOENAED PARTY'S OBJECTION
AND MOTION TO STRIKE FINIGAN'S
JULY 7, 2006 DECLARATION AND
EXHIBIT**

14 JOSHUA WOLF,
15
16 Subpoenaed Party.

Judge Alsup

17
18
19 Subpoenaed Party Josh Wolf hereby objects and moves to strike Jeffrey Finigan's
20 Declaration in Support of United States' Request For Order To Show Cause Why Joshua Wolf
21 Should Not Be Held In Civil Contempt paragraph 2, lines 8-11, and Exhibit A to said
22 declaration. The evidence cited by Mr. Finigan and Exhibit A is inadmissible against Wolf
23 under the Fifth Amendment to the United States Constitution. *Simmons v. United States*, 390
24 U.S. 377, 394, 88 S.Ct. 967, 976, 19 L.Ed.2d 1247 (1968) (when a defendant testifies in support
25 of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not
26 thereafter be admitted against him at trial on the issue of guilt unless he makes no objection); *See*
27 also *Pettyjohn v. United States*, 419 F.2d 651, 653 n. 5 (1969) (extending the holding in
28

1 Simmons to motions alleging Fifth Amendment grounds for suppression). The court in U.S. V.
2 Moran-Garcia, 783 F.Supp. 1266, 1271 (S.D. Cal. 1991) summoned up the law clearly:

3 In selecting a policy designed to effectively preserve scarce judicial resources, the Court
4 does not sacrifice defendants' Fifth Amendment right against compelled self-
5 incrimination. It is true that often the only individual who both (a) has personal
6 knowledge of material facts and (b) is available to the defense is the defendant himself.
7 Moreover it also is true that when a defendant desiring an evidentiary hearing is the only
8 suitable declarant, it becomes incumbent upon the defendant to file a testimonial
9 statement-even one which may include incriminating evidence. The filing of such a
10 statement, however, will not interfere with the defendant's Fifth Amendment right.

11 For these reasons, Wolf's request that the Court strike paragraph 2, lines 8-11, and Exhibit
12 A of Finigan's Declaration re: Contempt.

13 Respectfully Submitted,

14 Dated: July 19, 2006

15 DAN SIEGEL
16 JOSE LUIS FUENTES
17 SIEGEL & YEE

18 Attorneys for Joshua Wolf
19 Subpoenaed Party

20 By:

21 _____
22 JOSE LUIS FUENTES