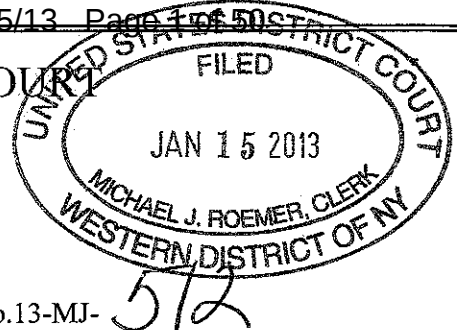


UNITED STATES DISTRICT COURT  
for the  
Western District of New York



In the Matter of the Search of  
(Briefly describe the property to be searched or identify the person by name and address.)

SKYDANCER SMOKE SHOP at 126 East Bayard Street,  
Seneca Fall, New York

Case No.13-MJ-

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer, request a search warrant and state under penalty of perjury that I have reason to believe that there is now concealed on the following person or property located in the Western District of New York  
(Identify the person or describe property to be searched and give its location):

The subject property to be searched:  
SKYDANCER SMOKE SHOP, a commercial establishment located within the Western Judicial District of New York, at 126 East Bayard Street, Seneca Falls, New York, to include any storage facilities located at the commercial address, as more particularly described in Attachment A, there exists evidence, fruits and instrumentalities of the violations prescribed in Title 18, United States Code, Sections 2342(a) and 2343 (relating to the trafficking in contraband cigarettes), and Title 18, United States Code, Section 1956 (relating to money laundering).

The person or property to be searched, described above, is believed to conceal (Identify the person or describe the property to be seized): See Attachment B for the Items to be Seized, all of which are fruits, evidence and instrumentalities of violations of Title 18, United States Code, Sections 2342(a) and 2343, and all of which are more fully described in the application and affidavit filed in support of this warrant, the allegations of which are adopted and incorporated by reference as if fully set forth herein.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;  
☒ contraband, fruits of crime, or other items illegally possessed;  
☒ property designed for use, intended for use, or used in committing a crime;  
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of Title 18, United States Code, Sections 2342(a) and 2343, and the application is based on these facts which are continued on the attached sheet..

☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

S.A. SCOTT L. HEAGNEY, ATF  
Printed name and title

Sworn to before me and signed in my presence.

Date: 1/15/2013

Judge's signature

City and State: Rochester, New York

HON. JONATHAN W. FELDMAN, USMJ  
Printed name and title

**AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE**

STATE OF NEW YORK     )  
COUNTY OF MONROE     )     SS:  
CITY OF ROCHESTER     )

13mj512

I, Scott L. Heagney, being duly sworn, deposes and says:

**INTRODUCTION**

- 1) I am a Supervisory Special Agent with the United States Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), a component of the U.S. Department of Justice. Currently, I serve as the Resident Agent in Charge of the Rochester, New York, field office. I have been employed by ATF for over 11 years. Prior to becoming an ATF Agent, I was a municipal police officer in Massachusetts for approximately 15 years.
  
- 2) This affidavit is submitted in support of an application for a search warrant for the **SKYDANCER SMOKE SHOP**, a commercial establishment located within the Western Judicial District of New York, at 126 East Bayard Street, Seneca Falls, New York, to include any storage facilities located at the commercial address, as more particularly described in Attachment A, which is incorporated herein. There is probable cause to believe that this location now contains evidence,

fruits and instrumentalities of violations of Title 18, United States Code, Section 2342(a) and 2343, all relating to the unlawful possession and sale of contraband cigarettes, as that term is defined under Title 18, United States Code, Section 2341(2), and Title 18, United States Code, Section 1956 and 1957, as it relates to the laundering of proceeds from specified unlawful activity.

- 3) This affidavit is also made in support of a civil and criminal seizure warrant for contents of banking account number 630022416, bearing the name of the "Seneca-Cayuga Tribe of Oklahoma SkyDancer Convenience Store," located at the **Community Bank NA Branch**, 70 Fall Street, Seneca Falls, New York, with Corporate Offices located at 5790 Widewaters Parkway, DeWitt, New York 13214 ("subject bank account") as it constitutes proceeds traceable to property derived from proceeds obtained, directly indirectly, from a violation of Title 18, United States Code, Section 18 U.S.C. § 2343 (a) (Trafficking in Contraband Cigarettes. Moreover, there is probable cause to believe that the subject account was involved in and/or property traceable to property involved in money laundering offenses, in violation of Title 18, United States Code, Section 1957. Accordingly, the subject bank account is subject to seizure and forfeiture to the United

States under Title 18, United States Code, Sections 981(a)(1)(A) and (C), 982, 984, and Title 28 United States Code, Section 2461(c).

4) Your affiant believes the facts and information presented herein, to be accurate and germane, to establishing probable cause to believe that violations of federal law have been and are being committed. The information contained in this affidavit is based upon my personal knowledge, as well as information relayed to me by agents and law enforcement officers from other agencies working with me in this investigation, all of which information I believe to be reliable. I have included in this affidavit only such information, which I believe is sufficient to establish probable cause to obtain the requested search warrant and seizure warrant, rather than all the facts known to me and/or developed during this investigation.

5) In the course of my employment with ATF, I have conducted or been involved in, hundreds of investigations of various types pertaining to ATF's jurisdiction. I have also received training in conducting contraband tobacco trafficking investigations. As part of this investigation, I have consulted with and received information and intelligence from

ATF Special Agent (SA) Stephen Dickey of the ATF Buffalo, New York, field office, who is a subject matter expert on contraband cigarette trafficking, regarding the illegal contraband cigarette trafficking activity taking place at the SKYDANCER SMOKE SHOP.

**RELEVANT BACKGROUND**

- 6) Tobacco is a highly regulated and taxed commodity in the United States. Governments regulate and tax tobacco products in order to raise revenue and to reduce the related health hazards associated with the use of tobacco products. Individuals or enterprises can profit in illegal contraband tobacco trafficking by illegally manufacturing and/or selling untaxed cigarettes outside of the regulated commerce channels, and thereby distributing these untaxed cigarettes throughout the United States. Individuals who engage in contraband cigarette trafficking defraud the Federal Government and the various States of billions in dollars in tax revenue and provide the opportunity for individuals across the United States, who wish to engage in criminal activity, with a readily available supply of cigarettes to illegally distribute.

- 7) The Contraband Cigarette Trafficking Act, 18 U.S.C. § 2341, *et seq* ("CCTA"), makes it unlawful, with certain exceptions, for any individual to knowingly ship, transport, receive, possess, sell, distribute, or purchase "contraband cigarettes."
- 8) Pursuant to 18 U.S.C. §2341(2), the term "contraband cigarettes" means a quantity of cigarettes in excess of 10,000 cigarettes, which bear no indicia of the payment of an applicable State or local cigarette tax in the State or locality where such cigarettes are found, if the State or local government requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes... ."
- 9) I am aware that 47 of the 50 states,<sup>1</sup> including the state of New York, explicitly require that a stamp, impression, or other indication must be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes. In New York, payment of the cigarette tax is evidenced by the placement of a stamp on every individual pack of cigarettes.

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<sup>1</sup>The states which do not require the placement of a tax stamp on individual packs of cigarettes are North Dakota, North Carolina, and South Carolina.

- 10) 18 U.S.C. § 2343(a) further requires that any person who ships, sells or distributes any quantity of cigarettes in excess of 10,000 cigarettes in a single transaction must keep accurate records pertaining to the shipment, receipt, sale and distribution on cigarettes, including, for example, the name, address, destination, vehicle license number, drivers license number, signature of the person receiving such cigarettes, and the name of the purchaser.
- 11) Trafficking in contraband cigarettes is a "specified unlawful activity" under the money laundering statutes, 18 U.S.C. §§ 1956(7)(A), 1957(f)(3) and 18 U.S.C. §1961(1)(racketeering activity includes violations of 18 U.S.C. 2341-2346).

CIGARETTES IN COMMERCE

- 12) Cigarettes are typically packaged 20 cigarettes to a "pack," 10 packs or 200 cigarettes to a "carton," and 60 cartons to a "case." A case of cigarettes will contain 12,000 cigarettes.

- 13) Commerce in cigarettes is generally conducted through a three-tiered chain of distribution involving a producer, wholesaler and retailer. The diversion of cigarettes can occur anywhere within the system of production or distribution chain. In past investigations, ATF has found that corrupt manufacturers, wholesalers, and retail outlets have been involved in diverting tobacco products.
- 14) Domestically produced cigarettes are generally shipped from the manufacture to one of several "public warehouses" located throughout the country. The federal excise tax ("FET") on a pack of cigarettes is paid by the manufacturer when the cigarettes are removed from the place of manufacturer and shipped to the public warehouse. A wholesaler then purchases the cigarettes from the public warehouse. Usually, these wholesalers are also "stamping agents." The wholesaler stamping agent, acting under the authority from the individual states, is responsible for affixing a particular state's tax excise stamp, depending on where the cigarettes are to be shipped. This represents the state excise tax ("SET"). Each individual cigarette package will be stamped and the wholesaler stamping agent will be responsible for paying the appropriate destination state excise tax on the pack of cigarettes. When the applicable state tax stamp is affixed to



a package of cigarettes it is an indicator to law enforcement and regulators of the industry that the SET has been collected by the stamping agent and subsequently paid to the appropriate state where the cigarettes are destined. The cigarettes may thereafter be further distributed and/or sold to another wholesaler, and eventually to the public by retailers, such as convenience stores, grocery stores and smoke shops.

#### NEW YORK STATE EXCISE TAXES

- 15) The applicable New York SET is the same per carton of 200 cigarettes no matter the brand or how expensive the cigarettes are. The SET in New York is currently \$4.35 per pack or \$43.50 per carton of cigarettes sold legitimately within the state.<sup>2</sup> New York requires the payment of this tax to be evidenced by the placement of a NYS tax stamp on each individual pack of cigarettes.

#### THE DIVERSION OF CIGARETTES TO AVOID TAXES

- 16) The primary goal of a cigarette diversion scheme is to increase the profit margin by not paying state and/or federal cigarette taxes. Cigarette tax evasion is a characteristic of

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<sup>2</sup>Cigarette Tax Regulations, Title 20, New York Code, Rules and Regulations.

a larger and more sophisticated criminal operation, possibly involving the collusion between certain wholesalers and retail outlets. Cigarette tax evasion is a significant problem. As the federal and state governments continue to raise taxes on cigarettes, cigarette diversion and evasion of the applicable taxes also increases.

17) One of the primary reasons that tobacco diversion is so profitable in the United States is the disparity between individual states' excise taxes. Increased cigarette taxes result in a large difference in the wholesale price and the price paid by consumers at the retail level. And because New York has one of the highest SET's in the country, it makes it extremely profitable for individuals and groups to engage in contraband tobacco diversion to New York. Contraband cigarette trafficking and diversion is attractive to criminals because it can provide large profits and the criminal penalties are less than the penalties for smuggling and distributing drugs.

18) Cigarettes can be diverted from the normal distribution system in a number of ways, resulting in the evasion of cigarette taxes. For example, the unlawful diversion of cigarettes may occur where retailers purchase stamped

cigarettes from a low tax state and thereafter transport and resell them in a high tax state, such as New York. In this way, a seller can make a profit up to \$23,000 on 10 cases of cigarettes (a car load), up to \$90,000 on 50 cases (a van load), and up to \$465,000 for 200 cases (a small truck load), depending on the brand of cigarette and the state where the cigarette products were obtained.<sup>3</sup>

19) Another way to avoid FETs or SETs may involve collusion between manufacturers and retailers. As is the case in this investigation, when the cigarettes are diverted from the manufacturer directly to retailers and consumers, it removes the wholesale stamping process, and thereby the required tax collection is entirely avoided. Cigarettes distributed in this fashion usually lack the placement of any tax stamp on individual packages of cigarettes because the SET has not been paid. Pursuant to when a non-exempt individual ships, transports, receives, possesses, sells, distributes, or purchases in excess of 10,000 of these cigarettes, the CCTA has been violated.

20) Numerous cigarette brands are manufactured by Native American tribes or by individual members of Native American

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<sup>3</sup>ATF, Office of Field Operations, New York Field Division, Tobacco Diversion Intelligence assessment.

reservations. The manufacturing of cigarettes on Native American territories or by Native American businesses, or sale of such cigarettes by Native American retailers, instills upon the cigarettes or sellers no special status. It has been long recognized by the courts that the states may impose a tax on transactions by and between Native Americans and other individuals. In fact, the only recognized exception is for transactions between Native Americans who are members of the same tribe where the transaction takes place on the reservation.<sup>4</sup>

- 21) In sum, if cigarettes are diverted from lawful commerce at any point in the distribution process the cigarettes may become contraband, as it is likely the SET will not have been collected nor paid to the respective governmental entities responsible for collecting such taxes.

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<sup>4</sup> See 1Department of Taxation and Finance of New York, et al. v. Milhelm Attea & Bros., Inc., etc., et al., 512 U.S. 61 (1994) (upholding New York quota system limiting number of untaxed cigarettes Native Americans could receive); 1Oklahoma Tax Commission v. Citizen Bank Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 512 (1991) (State can require Native American tribe to collect cigarette taxes on sales to non-members); 1Moe v. Confederated Salish and Kootanai Tribe, 425 U.S. 463, 475-83 (1986) (holding that Montana could require Indian smoke shop owners to collect and enforce the tax on sales of cigarettes to non-Indians by adding tax to sales price) 1Washington v. Confederated Tribes of the Coleville Indian Reservation, 477 U.S. 1349 (1980) (state's imposition of cigarette and sales taxes on on-reservation purchases by non-members of tribe was valid); United States v. Morrison, 686 F.3d 94 (2d Cir. 2012) (upholding the conviction of a Native American seller for violating the CCTA even though New York was not enforcing the cigarette excise tax laws against Native American sellers at the time); and Oneida Nation of New York v. Cuomo, 645 F.3d 154 (2d Cir. 2011) (upholding revised New York law limiting the quantity of untaxed cigarettes Native American tribes could receive).

- 22) I am also aware that those involved in the diversion of untaxed cigarettes use the proceeds gained from such activities to further their scheme through the acquisition of additional untaxed cigarettes and payment of operational expenses, such as shipping, advertising, salaries, rent, and supplies. Based on my training and experience, I am also aware that criminals deposit the proceeds/profits of these illegal activities in financial institutions.

**SPECIFIC EVIDENCE OF CIGARETTE DIVERSION OCCURRING AT  
THE SKYDANCER SMOKE SHOP**

- 23) According to Seneca County Clerk records, the **SKYDANCER SMOKE SHOP**, a commercial establishment located at 126 East Bayard Street, Seneca Falls, New York is owned by the "Seneca-Cayuga Tribe of Oklahoma." The Seneca-Cayuga Tribe of Oklahoma has a federally recognized reservation in the State of Oklahoma. The tribe also maintains a facility in Oklahoma where it manufactures cigarettes under the name of the "Seneca-Cayuga Tobacco Company." The Seneca-Cayuga Tribe of Oklahoma, however, has no state or federally recognized land or status in New York State. Further, a source knowledgeable about Native American tobacco issues indicates that most of the tribe's members live on the tribe's reservation in

Oklahoma. Indeed, the Seneca-Cayugas have no presence in New York other than the SKYDANCER SMOKE SHOP which they operate remotely from their Oklahoma reservation.

- 24) The principal cigarette brands currently sold in the SKYDANCER SMOKE SHOP are manufactured by Native Americans under various brand names, including "Skydancer," the Seneca-Cayuga tribe's own tobacco brand. Additional brands manufactured by other Native American tribes, and sold at the SKYDANCER SMOKE SHOP include "Smokin' Joes," "Senecas," "Buffalo," "Native," "Signals," "Seneca 120's," "Seneca Couture" and "King Mountain."

**NEW YORK STATE ATTORNEY GENERAL ISSUES A CEASE AND DESIST LETTER TO  
THE SENECA-CAYUGA TRIBE OF OKLAHOMA**

- 25) On May 31, 2012, in a letter from the Office of the N.Y.S. Attorney General, the Seneca Cayuga Tobacco Company was placed on explicit notice that "New York law requires that all shipments of cigarettes into New York States be sent through New York State licensed stamping agents who prepay the required state excise taxes." The N.Y.S. Attorney General warned that "[a]ccording to our records, Seneca Cayuga has not shipped its cigarettes intended for NY State through a NYS licensed stamping agent." The letter further stated that "by

this notice, we are directing the Seneca Cayuga to cease and desist shipping, selling and/or distributing Seneca Cayuga cigarettes into New York State, including on Indian lands."

**THE SPECIFIC INVESTIGATION OF RECENT CCTA VIOLATIONS OCCURRING  
AT THE SKYDANCER SMOKE SHOP IN SENECA FALLS, NEW YORK**

- 26) Based upon the following investigatory steps taken by Special Agents with the ATF, there is probable cause to believe that the SKYDANCER SMOKE SHOP and its employees continue to engage in the sale of contraband cigarettes in violation of Title 18, United States Code, Section 2342 and 2343, along with money laundering activities under Title 18, United States Code, Section 1956 and 1957.

**UNDERCOVER PURCHASE 1**

- 27) As part of this in investigation your affiant and other ATF agents have conducted undercover purchases of contraband cigarettes from the SKYDANCER SMOKE SHOP.
- 28) On December 10, 2012, your affiant went to the SKYDANCER SMOKE SHOP in an undercover capacity in order to purchase cigarettes. Your affiant was able to purchase a carton of Native American cigarettes on two separate occasions that day.

29) The first purchase was for a carton (200 cigarettes) of "Signal" cigarettes for \$32.75. The second purchase, made several hours after the initial purchase from a different clerk, was for a carton (200 cigarettes) of "Seneca" Blue King Size cigarettes for \$32.00. Both purchases were made in cash. No receipt was provided to your affiant upon completion of the sales, and no identification was requested. Upon later examination of the cartons of cigarettes at the Rochester ATF field office, your affiant observed that none of the 40 individual packs of cigarettes, in either of the two cartons, had the required New York State tax stamp affixed to the packs as required by law.

UNDERCOVER PURCHASE 2

30) On December 13, 2012, ATF Special Agents, acting in an undercover capacity, went to the SKYDANCER SMOKE SHOP and in a "single transaction" purchased 60 cartons (12,000 cigarettes) of various brands of Native American manufactured cigarettes. The total cost of the purchase was \$1,900.00. The agents paid for the transaction in cash. There was no request for identification. The sale was made by the female on-duty manager. During the sale, this person informed the agents



that there was no limit as to the quantity of cigarettes that could be purchased at one time but cautioned the agents not to get stopped by the police. Upon later examination at the Rochester ATF field office your affiant observed that none of the 600 individual packs of cigarettes purchased on this day had the required New York State tax stamp affixed to the packs as required by law.

UNDERCOVER PURCHASE 3

- 31) On January 3, 2013, ATF Special Agents, acting in an undercover capacity, went to the SKYDANCER SMOKE SHOP and, in a "single transaction" purchased 60 cartons (12,000 cigarettes) of various brands of Native American manufactured cigarettes. The total cost of the purchase was \$1,994.00. The agents paid for the transaction in cash. There was no request for identification. Upon later examination of the 60 cartons of cigarettes at the Rochester ATF field office, your affiant observed that none of the 600 individual packs of cigarettes purchased on this day had the required New York State tax stamp affixed to the packs as required by law.

ADDITIONAL OBSERVATIONS MADE DURING INVESTIGATION

32) While your affiant has been inside of the SKYDANCER SMOKE SHOP, your affiant has been able to observe a very sophisticated video surveillance system, recording all activities inside and outside of the SKYDANCER SMOKE SHOP. Your affiant is aware that a complex system of video surveillance equipment is often common in smoke shops, due in part to protect against theft, because of the large amounts of on hand and exchanged currency, as well as to protect against the criminal element that some shops sell large amounts of contraband cigarettes to. Your affiant knows of past investigations conducted by ATF and law enforcement where criminal organizations have used the contraband cigarette trade to profit by millions of dollars. Some of these investigations focused on criminal activity that fueled extravagant lifestyles, while some other investigations have funded terrorist organizations. Because of the large amount of cash kept on hand and the potential for internal theft or robbery, smoke shops are known to have high end video/audio surveillance systems to monitor and record activity of customers and employees.

33) Furthermore, your affiant while inside the SKYDANCER SMOKE SHOP, has observed convenience store supplies, cartons and cases of Native American manufactured cigarettes and other tobacco products stored in a storage area/backroom adjacent to the main floor area of the store. In a second storage area at the rear of the store near the drink coolers, your affiant observed numerous discarded cardboard cigarette case boxes.

34) Based upon my observations and the purchases on December 10, 2012, December 13, 2012, and January 3, 2013, there is probable cause to believe that there currently exist large quantities of contraband cigarettes that are being stored and possessed for ultimate sale and distribution from the SKYDANCER SMOKE SHOP, all in violation of the provisions of the CCTA.

35) Based upon my experience and that of other agents with whom I have spoken, I know that it is common for individuals involved in the sale of cigarettes, whether legal or illegal, to maintain books, ledgers and other records relating to the order, sale, and distribution of cigarettes, and that these records often are maintained in the location utilized to operate their businesses. Further, based on my experience and that of other law enforcement officials with whom I have

worked, I know that individuals often maintain personal and business records at their businesses for the purpose of filing federal tax returns. Indeed, Internal Revenue Code 26 U.S.C. § 6001 and the regulations promulgated there under require all persons to maintain tax records for at least three years.

36) Based upon my experience and that of other agents with whom I have spoken, I also know that individuals involved in the sale of cigarettes often maintain: (1) an inventory of such and related paraphernalia; cash and money orders; items to store and transport such items and cash; contact information and photographs of themselves, their conspirators, assets or illegal contraband; and electronic equipment used to store information related to contraband cigarettes, such materials commonly are maintained at the locations utilized by them to engage in such trafficking.

37) Based upon my experience, personal observation and conversations with other agents with whom I have spoken, I also know that businesses that are open to the public and deal in large amounts of cash usually have video/audio surveillance systems that record activities/conversations in areas of the business, to include the sales area of the store. Modern surveillance systems are used to record, among other things,

cash transactions, business deals, persons, vehicles and activities related to everyday business. These surveillance systems can also be used to record and maintain events related to evidence in the robbery of the store, in addition to recording customer transactions and provide surveillance of employees in the event a cash drawer comes up short at the end of a shift.

#### COMPUTER EVIDENCE

38) Your affiant knows, based on his knowledge, training and experience, and the experience of other law enforcement personnel, that computer hardware, software, documentation, passwords, and data security devices may be important to a criminal investigation in two distinct and important aspects: (1) the objects themselves may be instrumentalities, fruits, or evidence of a crime, and/or (2) the objects may have been used to collect and store information about crimes in the form of electronic data.

39) I have also learned from a ATF computer specialist, who has received training in the execution of search warrants involving computers and related equipment, electronic data preparation, and the recovery, documentation and

authentication of evidence that computer data can be stored on a variety of systems and storage devices, including hard disk drives, floppy disks, compact disks, magnetic tapes, zip drives and memory chips. I also know that, during the search of a premise, it is not always possible to search computer equipment and storage devices for data for a number of reasons, including the following:

- a. Searching computer systems is a highly technical process which requires specific expertise and specialized equipment. There are so many types of computer hardware and software in use today that it is impossible to bring to the search site all of the necessary technical manuals and specialized equipment necessary to conduct a thorough search. In addition, it may also be necessary to consult with computer personnel who have specific expertise in the type of computer, software application or operating system that is being searched.
- b. Searching computer systems requires the use of precise, scientific procedures which are designed to maintain the integrity of the evidence and to recover "hidden," erased, compressed, encrypted or

password-protected data. Computer hardware and storage devices may contain "booby traps" that destroy or alter data if certain procedures are not scrupulously followed. Since computer data is particularly vulnerable to inadvertent or intentional modification or destruction, a controlled environment, such as a law enforcement laboratory, is essential to conducting a complete and accurate analysis of the equipment and storage devices from which the data will be extracted.

- c. The volume of data stored on many computer systems and storage devices will typically be so large that it will be highly impractical to search for data during the execution of the physical search of the premises. A single megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. Storage devices capable of storing one hundred gigabytes of data are now commonplace in desktop computers.

- d. Computer users can attempt to conceal data within computer equipment and storage devices through a number of methods, including the use of innocuous or misleading filenames and extensions. For example, files with the extension ".jpg" often are image files; however, a user can easily change the extension to ".txt" to conceal the image and make it appear that the file contains text. Computer users can also attempt to conceal data by using encryption, which means that a password or device, such as a "dongle" or "keycard," is necessary to decrypt the data into readable form. In addition, computer users can conceal data within another seemingly unrelated and innocuous file in a process called "steganography." For example, by using steganography a computer user can conceal text in an image file which cannot be viewed when the image file is opened. Therefore, a substantial amount of time is necessary to extract and sort through data that is concealed or encrypted to determine whether it is evidence, contraband or instrumentalities of a crime.



- 40) Upon securing the premises, law enforcement personnel trained in searching and seizing computer data (the "computer personnel") will make an initial review of any computer equipment and storage devices to determine whether these items can be searched on-site in a reasonable amount of time and without jeopardizing the ability to preserve the data.
- 41) If the computer personnel determine it is not practical to perform an on-site search of the data within a reasonable amount of time, then the computer equipment and storage devices will be seized and transported to an appropriate law enforcement laboratory for review. The computer equipment and storage devices will be reviewed by appropriately trained personnel in order to extract and seize any data that falls within the list of items to be seized set forth herein.
- 42) In searching the data, the computer personnel may examine all of the data contained in the computer equipment and storage devices to view their precise contents and determine whether the data falls within the items to be seized as set forth herein. In addition, the computer personnel may search for and attempt to recover "deleted," "hidden" or encrypted data to determine whether the data falls within the list of items to be seized as set forth herein.

- 43) If the computer personnel determine that the data does not fall within any of the items to be seized pursuant to this warrant or is not otherwise properly seized, the government will return these items within a reasonable period of time not to exceed 60 days from the date of execution of the warrant. If the government needs additional time to determine whether the data falls within any of the items to be seized pursuant to this warrant, it must obtain an extension of the time period from the Court within the original sixty-day period.
- 44) Your affiant further recognizes that The SKYDANCER SMOKE SHOP is an active business and that a seizure of computers and potential computer network may have unintended and undesired effects. In response to these concerns, law enforcement personnel will attempt to minimize the inconvenience to the legitimate customers, if any, by evaluating the state of the computer network, desktop computers, and removable electronic media at The SKYDANCER SMOKE SHOP and determine the most appropriate and expeditious method of seizing the electronic information that will protect the integrity of the electronic information and limit disruption of the business. This may include temporary removal of items and peripheral devices containing electronic evidence for the purpose of creating electronic "images" of information stored on those devices.

Imaging a computer permits the agents to obtain an exact copy of the computer's stored data without actually seizing the computer hardware for an extended period of time. If necessary, the computer experts or other technical experts will then conduct a search for the appropriate files described in this affidavit from the "image" copy at a later date.

- i. If "imaging" is not practical on site, the government may seize those components of the computer system that the government believes contain information described in the warrant for "imaging" off-site. The "imaging" of any computer authorized by this warrant shall be completed within ten (10) calendar days from the date of the search warrant unless, for good cause demonstrated, such date is extend by court order.

CONCLUSION

45) Based upon the information set forth in this affidavit, it is respectfully submitted there is probable cause to believe that contained within the premises known as the **SKYDANCER SMOKE SHOP**, a commercial establishment located within the Western Judicial District of New York, at 126 East Bayard Street, Seneca Falls, New York, to include any storage facilities located at the commercial address, as more particularly described in Attachment A, there exists evidence, fruits and instrumentalities of the violations prescribed in Title 18, United States Code, Sections 2342(a) and 2343(relating to the trafficking in contraband cigarettes), and Title 18, United States Code, Sections 1956 (relating to money laundering).

46) Accordingly, your affiant respectfully requests this Court issue a search warrant for the **SKYDANCER SMOKE SHOP**, a commercial establishment located within the Western Judicial District of New York, at 126 East Bayard Street, Seneca Falls, New York, to include any storage facilities located at the commercial address, and to seize property constituting evidence of the commission of the foregoing criminal offenses,

contraband, fruits of the crimes, and other items illegally possessed, and property used in committing the crimes, including the following items, which are also set forth in Attachment B:

- a) Financial instruments such as currency, cash, money orders, money order carbons, money order receipts or other records associated with the sale of contraband cigarettes.
- b) Contraband cigarettes and tobacco products, by whatever brand name, which fail to display New York tobacco sales tax stamps.
- c) Business records, in any format, tending to show that the target has committed the specified offenses, including documents and records reflecting the financial status of or any financial transactions by (the origin, receipt, disbursement, or concealment of funds) of the SKYDANCER SMOKE SHOP, and any coconspirator, or any entity affiliated with or owned by them, including, but not limited to: financial books, records, ledgers, or journals; bank statements; deposit and withdrawal slips; ATM slips, cards and

records; wire transfers; cashier's checks, cancelled checks, checkbooks, check registers, postal receipts, and check stubs; brokerage account documents; records of stock or bond ownership; loan, mortgage, lease, rental or other property-related documents; utility, phone, and credit card receipts and bills; payroll and commission records; travel and expense records; records of safe deposit boxes; records for storage units; and any other statements, records, correspondence, memoranda, telephone messages, diaries and message pads, handwritten notes, appointment books, planners, diaries, and calendars pertaining to the sale of contraband cigarettes, or the receipt, secretion, transfer or concealment of profits or proceeds from the sale or distribution of contraband cigarettes.

- d) Counterfeit tax stamps or tax stamping machines; licenses and permits, contracts and agreements, and other related items and documents.
- e) Items used to store or transport currency, cigarettes, including, but not limited to, safes and their contents, safe deposit keys, storage unit keys, duffel

bags, plastic bags, boxes, mailing labels and mailing receipts.

- f) Paraphernalia used to facilitate contraband cigarette trafficking, structuring and money laundering transactions, including money counting machines, money wrappers, calculators, facsimile machines, computers, cellular telephones, answering machines, voice messaging systems, beepers, and other related items.
- g) Documents, in any form, reflecting the persons or entities or assets involved in the distribution of contraband cigarettes, including, but not limited to: address or telephone books, rolodex indices, business cards, and any other items or notes reflecting names, addresses, telephone numbers, facsimile numbers, e-mail addresses, pager numbers, or other contact information; photographs, including still photos, negatives, files, undeveloped film and the contents therein; videotapes, CDs, DVDs, electronic personal organizers or other electronic data or media; and identification documents such as passports, driver's licenses, alien cards, telephone calling cards, credit

cards, social security cards, employee identification cards, and vehicle registration cards.

- h) Any and all documents, records, correspondence or other materials (however written, stored or maintained) relating to unlawful dealing in contraband cigarettes, associating any of the coconspirators or any business or other entity owned by or affiliated with them; and any other person or entity involved in the distribution of cigarettes.
- i) Any computer equipment and storage device capable of being used to store the documents, materials and evidence listed above;
- j) Any computer equipment used to facilitate the transmission, creation, display, encoding or storage of the documents, materials and evidence listed above, including word processing equipment, modems, docking stations, monitors, printers, plotters, encryption devices, and optical scanners;
- k) Any magnetic, electronic or optical storage device capable of storing, maintaining, retrieving,



concealing, and transmitting the documents, materials and evidence listed above, such as floppy disks, hard disks, tapes, CD-ROMs, CD-R, CD-RWs, DVDs, optical disks, cartridges, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants;

- l) Any documentation, operating logs and reference manuals regarding the operation of the computer equipment, storage devices or software;
- m) Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware, storage devices or data to be searched;
- n) Any physical keys, encryption devices, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices or data; and

- o) Any passwords, password files, test keys, encryption codes or other information necessary to access the computer equipment, storage devices or data.

**SEIZURE WARRANT FOR ACCOUNT # 630022416**  
**LOCATED AT THE COMMUNITY BANK NA**

47) In addition to the request for a search warrant at the SKYDANCER SMOKE SHOP, your affiant further requests civil and criminal seizure warrants for the contents of **ACCOUNT #630022416 LOCATED AT THE COMMUNITY BANK NA**, located at 70 Fall Street, Seneca Falls, NY (Corporate Offices, 5790 Widewaters Parkway, DeWitt, NY 13214), Account Number: 630022416, bearing the name of the "Seneca-Cayuga Tribe of Oklahoma SkyDancer Convenience Store".

48) As more particularly outlined below, there is probable cause to believe that the contents of the subject bank account sought to be seized constitutes proceeds traceable to property derived from proceeds obtained, directly indirectly, from a violation of Title 18, United States Code, Section 18 U.S.C. § 2343 (a) (Trafficking in Contraband Cigarettes). Moreover, there is probable cause to believe that the contents of the bank account listed above was involved in and/or property traceable to property involved in

money laundering offenses, in violation of Title 18 United States Code, Section 1957. Accordingly, the contents of the subject bank account are subject to seizure and forfeiture to the United States under Title 18, United States Code, Sections 981(a)(1)(A) and (C), 982, 984, and Title 28 United States Code, Section 2461(c).

**STATUTORY BASIS FOR FORFEITURE**

**I. Civil Forfeiture of Proceeds**

49) Title 18 of the United States Code, Section 981(a)(1)(A) provides for the civil forfeiture to the United States of property involved in a violation of Title 18, United States Code, Section 1957.

50) Title 18 of the United States Code, Section 981(a)(1)(C) provides for the civil forfeiture to the United States of the proceeds of crimes designated as "specified unlawful activities":

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of 1956, 1957 or 1960 of this title, or any other property traceable to such property.

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of [. . .] any offense constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

51) Title 28 of the United States Code, Section 2461

provides a mode of recovery in criminal forfeiture proceedings where federal civil forfeiture is permitted by law:

(c) If a person is charged in a criminal case with a violation of an Act of Congress for which the civil or criminal forfeiture of property is authorized, the Government may include notice of the forfeiture in the indictment or information pursuant to the Federal Rules of Criminal Procedure. If the defendant is convicted of the offense giving rise to the forfeiture, the court shall order the forfeiture of the property as part of the sentence in the criminal case pursuant to the Federal Rules of Criminal Procedure and section 3554 of title 18, United States Code. The procedures in section 413 of the Controlled Substances Act (21 U.S.C. 853) apply to all stages of a criminal forfeiture proceeding, except that subsection (d) of such section applies only in cases in which the defendant is convicted of a violation of such Act.

52) Title 18 of the United States Code, Section 1956(c)(7)

defines crimes which are included as "specified unlawful activities" for purposes of civil or criminal forfeiture:

(7) the term "specified unlawful activity" means-- [...]

(A) any act or activity constituting an offense listed

in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31

. . .

53) A violation of 18 U.S.C. § 2343 (a) (Trafficking in Contraband Cigarettes) is included in the definition of "specified unlawful activity."

54) Federal law sets forth a special provision for the seizure and forfeiture of fungible property at Title 18 of the United States Code, Section 984:

(a) (1) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution (as defined in section 20 of this title), or precious metals-

(A) it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture; and

(B) it shall not be a defense that the property involved in such an offense has been removed and replaced by identical property.

(2) Except as provided in subsection (b), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

(b) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

**II. Criminal Forfeiture of Property Involved in the Offense**

55) Title 18 of the United States Code, Section 982(a)(1) provides for the criminal forfeiture to the United States of property which is involved in, or which is traceable to property involved in, money laundering:

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of [Title 18]. . . shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.

**PROBABLE CAUSE FOR SEIZURE**

56) In support of this request, your affiant has obtained the 2012 banking records for the "Seneca-Cayuga Tribe of Oklahoma SkyDancer Convenience Store" account at Community Bank NA. Over the last 12 months, over \$16 million in deposits have been made into the convenience store account. This includes credit card receipts, cash deposits and other miscellaneous deposits made on a daily basis from the sale of tobacco products, gasoline and convenience store items. An analysis of the account for 2012 indicates that the vast majority of their business is generated from the sale of

tobacco and gasoline products, as the store paid out at least \$6,682,000 for tobacco product supplies, and \$2,966,483 for petroleum product supplies just this past year. As of January 14, 2013, the balance of the account was \$361,581.35.

57) During that same period, approximately the same amount of money has been debited from this same account. The records indicate that the debits were for numerous items, including, among other things, payroll, miscellaneous checks and debit card use. The bulk of the debits, however, relate directly to the ongoing operations of the store. This includes regular wire transfers to various suppliers each and every month, primarily for tobacco (e.g., HCI Distribution Tobacco, Seneca Cayuga Tobacco Company), and gas suppliers and transporters (Pro Oil, Wolf's Run Transport) totaling several million dollars. It also includes regularly scheduled *monthly* wire transfers directly to Seneca Cayuga Tribe of Oklahoma's General Fund account located in the state of Oklahoma, again totaling several million dollars. Almost all of the wire transfers were well in excess of \$10,000.

58) Your affiant has also determined that over the course of the last 14 months, more than fifty (50) United States Department of Treasury, Financial Crimes Enforcement

Network (FinCEN), Currency Transaction Reports (CTR) have been filed involving Account Number 630022416 in the name of "Seneca-Cayuga Tribe of Oklahoma SkyDancer Convenience Store" relating to cash deposits into the subject banking account in amounts exceeding \$10,000. As the court is aware, financial institutions are required to file FinCEN Form 104 (CTR) for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction in currency of more than \$10,000. Multiple transactions must be treated as a single transaction if the financial institution has knowledge that (1) they are by or on behalf of the same person, and (2) they result in either currency received (Cash In) or currency disbursed (CashOut) by the financial institution totaling more than \$10,000 during any one business day.

59) My review of the various CTR's filed in connection with the target account reveals that the total amount of cash deposits associated with the filed CTR's is approximately \$1.5 million dollars. To my knowledge, no other CTRs have been produced for any other New York banking account associated with or listed under the Seneca-Cayuga Tribe of Oklahoma, Skydancer Convenience Store. As I previously stated, the vast majority of the proceeds generated by the store comes from tobacco sales.



60) On December 13, 2012, the same day ATF agents, acting in an undercover capacity, went to the SKYDANCER SMOKE SHOP and in a "single transaction" and purchased 60 cartons (12,000 cigarettes) of various brands of Native American manufactured cigarettes, for a total cost of \$1,900.00, there were \$90,755 in cash deposits made at the Community Bank in Seneca Falls, New York.<sup>5</sup> That same day, a wire transfer was sent from this account to the Seneca Cayuga Tribe of Oklahoma Tobacco Company in the amount of \$31,404. Your affiant has not yet received the bank records for the January 3, 2013 controlled purchase of contraband cigarettes.

61) Pursuant to Title 18, United States Code, Section 1957(a), it is unlawful for someone to engage in monetary transactions involving the proceeds of property derived from a specified unlawful activity to deposit \$10,000 or more of these proceeds in a financial institution.

62) As outlined above, the SkyDancer Smoke Shop has utilized this banking account to regularly conduct its business, which includes trafficking in contraband

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<sup>5</sup> On December 14, 2012, the following day, another \$24,941 in cash was deposited.

cigarettes, evidenced by monthly wire transfers in excess of \$10,000 to purchase contraband cigarettes. Indeed, agents were able to purchase significant quantities of contraband cigarettes in December 2012 and January 2013, signifying an ongoing intent to engage in criminal activity, as opposed to an isolated incident or mistake.

63) Based upon the foregoing, I submit that there is probable cause to believe that the Account #630022416, located at the **Community Bank NA Branch**, Seneca Falls, New York, bearing the name of the "Seneca-Cayuga Tribe of Oklahoma SkyDancer Convenience Store," contains proceeds or is derived from proceeds and/or constitutes property involved in money laundering transactions in violation of 18 U.S.C. § 1957, and the contents are, therefore, subject to seizure and forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(A) and (C), 982 (a)(1), 984 and Title 28, United States Code, Section 2461(c).

**Specific Request Relating to Financial Institutions**

64) It is requested that the seizure warrant issued by the Court to Community Bank NA Branch, 70 Fall Street, Seneca Falls, New York, with Corporate Offices located at 5790 Widewaters Parkway, DeWitt, New York 13214 direct that the

institution shall immediately and without delay, change the name, title and interest of to read as follows: United States Marshals Service for the Western District of New York, formerly the account of Seneca-Cayuga Tribe of Oklahoma SkyDancer Convenience Store.

65) It is further requested that the Court's order direct that Community Bank NA Branch shall not transfer, convey or dispose of any monies within the specified accounts of the financial institution without further order of this Court, that the financial institution shall not honor any demands by anyone or any entity to release any money, nor shall the financial institution honor any checks or other negotiable instruments drawn on the named accounts and presented to the financial institution after service of the seizure warrant and order.

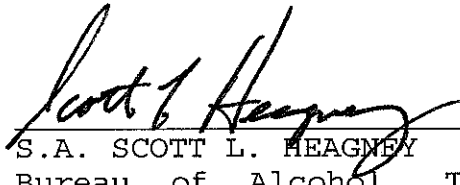
66) It is further requested that the Court's order direct that Community Bank NA Branch immediately and without delay upon service of the seizure warrant and order, terminate, cancel, prohibit, abolish and de-authorize any and all authority for any automatic teller machine cards, debit cards, electronic funds transfer cards, or any other cards which are associated with the named account.

67) It is further requested that the Court's order direct that Community Bank NA Branch accept any future deposits to the named accounts, including but not limited to wire transfers from other bank accounts, and credit the account accordingly for retention, safe keeping and maintenance on behalf of the United States Marshals Service for the Western District of New York.

68) It is further requested that the Court's order direct that Community Bank NA Branch send copies of all future correspondence pertaining to these accounts, including but not limited to, statements and notices, to the United States Marshals Service for the Western District of New York.

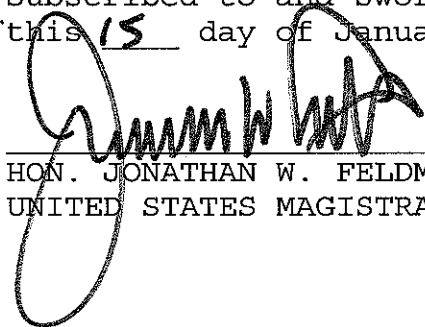
69) It is further requested that the Court's order direct Community Bank NA Branch to comply with each and every term of the Court's order, however, subject to the Court modifying its own order for good cause shown.

WHEREFORE, your affiant hereby requests that the court issue a search warrant for the SKYDANCER SMOKE SHOP, to include outhouses or other storage facilities located at the commercial address, and civil and criminal seizure warrants for ACCOUNT #630022416 LOCATED AT THE COMMUNITY BANK NA, located at 70 Fall Street, Seneca Falls, NY (Corporate Offices, 5790 Widewaters Parkway, DeWitt, NY 13214), Account Number: 630022416, bearing the name of the "Seneca-Cayuga Tribe of Oklahoma SkyDancer Convenience Store".



S.A. SCOTT L. HEAGNEY  
Bureau of Alcohol, Tobacco and  
Firearms

Subscribed to and sworn before me  
this 15 day of January 2013.



HON. JONATHAN W. FELDMAN  
UNITED STATES MAGISTRATE JUDGE

**ATTACHMENT A**

**SKYDANCER SMOKE SHOP**, a commercial establishment located within the Western Judicial District of New York, at 126 East Bayard Street, Seneca Falls, New York, to include any storage facilities located at the commercial address.

ATTACHMENT B

LIST OF ITEMS TO BE SEIZED

- a) Financial instruments such as currency, cash, money orders, money order carbons, money order receipts or other records associated with the sale of contraband cigarettes.
- b) Contraband cigarettes and tobacco products, by whatever brand name, which fail to display New York tobacco sales tax stamps.
- c) Business records, in any format, tending to show that the target has committed the specified offenses, including documents and records reflecting the financial status of or any financial transactions by (the origin, receipt, disbursement, or concealment of funds) of the SKYDANCER SMOKE SHOP, and any coconspirator, or any entity affiliated with or owned by them, including, but not limited to: financial books, records, ledgers, or journals; bank statements; deposit and withdrawal slips; ATM slips, cards and records; wire transfers; cashier's checks, cancelled checks, checkbooks, check registers, postal receipts, and check stubs; brokerage account documents; records of stock or bond ownership; loan, mortgage, lease, rental or other property-related documents; utility, phone, and credit card receipts and bills; payroll and commission records; travel and expense records; records of safe deposit boxes; records for storage units; and any other statements, records, correspondence, memoranda, telephone messages, diaries and message pads, handwritten notes, appointment books, planners, diaries, and calendars pertaining to the sale of contraband cigarettes, or the receipt, secretion, transfer or concealment of profits or proceeds from the sale or distribution of contraband cigarettes.
- d) Counterfeit tax stamps or tax stamping machines; licenses and permits, contracts and agreements, and other related items and documents.
- e) Items used to store or transport currency, cigarettes, including, but not limited to, safes and their contents, safe deposit keys, storage unit keys, duffel bags, plastic bags, boxes, mailing labels and mailing receipts.
- f) Paraphernalia used to facilitate contraband cigarette trafficking, structuring and money laundering transactions,

including money counting machines, money wrappers, calculators, facsimile machines, computers, cellular telephones, answering machines, voice messaging systems, beepers, and other related items.

- g) Documents, in any form, reflecting the persons or entities or assets involved in the distribution of contraband cigarettes, including, but not limited to: address or telephone books, rolodex indices, business cards, and any other items or notes reflecting names, addresses, telephone numbers, facsimile numbers, e-mail addresses, pager numbers, or other contact information; photographs, including still photos, negatives, files, undeveloped film and the contents therein; videotapes, CDs, DVDs, electronic personal organizers or other electronic data or media; and identification documents such as passports, driver's licenses, alien cards, telephone calling cards, credit cards, social security cards, employee identification cards, and vehicle registration cards.
- h) Any and all documents, records, correspondence or other materials (however written, stored or maintained) relating to unlawful dealing in contraband cigarettes, associating any of the coconspirators or any business or other entity owned by or affiliated with them; and any other person or entity involved in the distribution of cigarettes.
- i) Any computer equipment and storage device capable of being used to store the documents, materials and evidence listed above;
- j) Any computer equipment used to facilitate the transmission, creation, display, encoding or storage of the documents, materials and evidence listed above, including word processing equipment, modems, docking stations, monitors, printers, plotters, encryption devices, and optical scanners;
- k) Any magnetic, electronic or optical storage device capable of storing, maintaining, retrieving, concealing, and transmitting the documents, materials and evidence listed above, such as floppy disks, hard disks, tapes, CD-ROMs, CD-R, CD-RWs, DVDs, optical disks, cartridges, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants;
- l) Any documentation, operating logs and reference manuals regarding the operation of the computer equipment, storage devices or software;



- m) Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware, storage devices or data to be searched;
- n) Any physical keys, encryption devices, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices or data; and
- o) Any passwords, password files, test keys, encryption codes or other information necessary to access the computer equipment, storage devices or data.

(Rev Final Version Approved by Mag. 5-4-04 - adding storage to electronic media)

ADDENDUM TO SEARCH WARRANT  
SEARCH OF COMPUTERS OR OTHER ELECTRONIC STORAGE MEDIA

1. The computer or electronic storage media search authorized by this warrant shall be completed within 60 days from the date of the warrant unless, for good cause demonstrated, such date is extended by Order of this Court.

2. In conducting the search authorized by this warrant, the government shall make reasonable efforts to utilize computer search methodology to search only for files, documents or other electronically stored information which are identified in the warrant itself.

3. Should the government not locate any of the items specified in the warrant (or other fruits, contraband, instrumentalities, or property subject to forfeiture) within the authorized search period (including any extensions granted), the government shall return the computer or electronic storage media to the owner.

4. In any circumstance not covered by paragraph three (3) above, upon completion of the search, the government, upon request of the owner of the computer, shall promptly return to the owner of the computer copies of all files and documents requested and specified by the owner, excluding any items or files seized pursuant to the warrant or other fruits, contraband, instrumentalities or property subject to forfeiture.

5. If electronically stored data or documents have been identified by the government pursuant to this warrant, or other fruits, contraband, instrumentalities or property subject to forfeiture, the government may retain the original hard drive or other data storage mechanism pending further order of this Court. The retention of the original hard drive or other data storage mechanism does not relieve the government of its obligation to return to the owner of the computer files, documents or other electronically stored information identified in paragraph (4) above.

6. Nothing in this warrant shall limit or prevent the government from retaining the computer or electronic storage media as fruits, contraband or an instrumentality of a crime or commencing forfeiture proceedings against the computer and/or the data contained therein. Nothing in this warrant shall limit or prevent the owner of the computer or electronic storage media from (a) filing a motion with the Court pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure for the Return of Property or (b) making a request of the government to return certain specified files, data, software or hardware.

7. Should there be a dispute or question over ownership of any computer or electronic storage media or any electronically stored data or documents stored therein, the government shall promptly notify this Court so that such dispute or question can be resolved.