

FILED
KING COUNTY, WASHINGTON

MAR 07 2018

SUPERIOR COURT CLERK
BY Shaylynn Nelson
DEPUTY

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

NO. 18-1-00591-1

Plaintiff,

v.

AFFIDAVIT FOR
DETERMINATION OF
PROBABLE CAUSE

SALVADOR SAHAGUN,

Defendant.

Andrew R. Hamilton, being first duly sworn upon oath, deposes and states:

I am an Assistant Attorney General in the Criminal Justice Division of the Attorney General's Office (AGO-CRJ) for the State of Washington. I am familiar with the investigation conducted by the Department of Revenue (DOR) into the activities of SALVADOR SAHAGUN, the owner and operator of several restaurants in King and Snohomish Counties. This affidavit is based upon that investigation.

The Honorable Dan Satterberg, King County Prosecuting Attorney, granted the Washington State Office of Attorney General concurrent authority to investigate this case and conduct any prosecution arising from said investigation into the actions of the restaurants in King County. The Honorable Mark Roe, Snohomish County Prosecuting Attorney, granted the Washington State Office of Attorney General concurrent authority to investigate this case and

1 conduct any prosecution arising from said investigation into the actions of the restaurants in
2 Snohomish County.

3 According to the DOR, all individuals and business entities wishing to conduct business
4 in the State of Washington must file a Master Business License and receive a Unified Business
5 Identifier prior to engaging in business. If the business (taxpayer) intends to engage in activity
6 subject to retail sales tax, the business must also obtain a Certificate of Registration from the
7 DOR. Businesses that are engaged in the sales of retail goods and personal property in the State
8 of Washington are required to collect Washington State sales and other applicable taxes from
9 their customers. RCW 82.08.050 requires the seller to collect retail sales tax, which is “deemed
10 to be held in trust by the seller until paid” to the DOR. Businesses are required to report their
11 gross receipts from the retail sales and remit the appropriate amount of sales tax by the due date
12 of the tax return for the reporting period.

13 Based on the following facts set forth in this affidavit, there is probable cause to believe
14 that SALVADOR SAHAGUN has committed the crimes of Theft in the First Degree
15 (RCW 9A.56.030) – 4 counts in King County and 2 counts in Snohomish County, and
16 Possession and Use of Sales Suppression Software (RCW 82.32.290) – 2 counts in King County
17 and 1 count in Snohomish County.

18 SAHAGUN has owned and operated several restaurants in King and Snohomish
19 Counties during the period of January 2012 through December 31, 2016, the period of time
20 covered by the DOR audit. These restaurants include Tacos Guaymas of West Seattle,
21 Tacos Guaymas Broadway, Tacos Guaymas Greenlake, Tacos Guaymas of Marysville at
22 Fremont, Tacos Guaymas Lynnwood and Tacos Guaymas of Marysville. According to the DOR
23 auditor who performed the audit on each of these restaurants, when comparing the point of sales
24 records from the restaurants with the tax returns submitted by SAHAGUN to the DOR, the
25 auditor concluded that income from each of these restaurants had been substantially
26 underreported.

1 The auditor found that the majority of sales tickets (receipts) from each restaurant were
2 missing from SAHAGUN's point of sale system. The auditor suspected that SAHAGUN was
3 using sales suppression software. This software, which is illegal to possess or use in the State of
4 Washington, operates on cash transactions. For example, a person may pay \$50 in cash for a
5 meal at a restaurant utilizing this software. The software will record the transaction as costing
6 \$10 instead of the \$50 that was originally paid in cash. By using this software, the taxpayer is
7 able to avoid paying sales tax on the missing \$40. In other incidents, this software will permit
8 the taxpayer to delete entire transactions from the point of sale system.

9 To determine whether such software was in use at these restaurants, a number of DOR
10 employees acting in an undercover capacity went to the various restaurants where they paid cash
11 for meals. These transactions included five visits to Tacos Guaymas of West Seattle between
12 12/16/15 and 12/29/15, eight visits to Tacos Guaymas Greenlake between 8/13/15 and 12/21/15,
13 four visits to Tacos Guaymas of Marysville between 12/13/15 and 12/18/15, eight visits to Tacos
14 Guaymas Broadway on 9/30/14, six visits to Tacos Guaymas Lynnwood between 12/17/15 and
15 12/28/15, and four visits to Tacos Guaymas of Marysville at Fremont between 12/16/15 and
16 12/23/15. In examining the records from the restaurants' computer systems, auditors were able
17 to recover all six sales receipts from Lynnwood, each of which correctly reflected the amount of
18 the respective transactions. The computer system for Tacos Guaymas Greenlake crashed before
19 a comparison could be made with that restaurant's sales receipts. For Tacos Guaymas Broadway,
20 the statute of limitations for use of sales suppression software had expired before charges could
21 be filed. For Tacos Guaymas of West Seattle, Tacos Guaymas of Marysville at Fremont and
22 Tacos Guaymas of Marysville, however, the auditor determined that sales suppression software
23 was being used at each of these facilities.

24 In addition, a computer audit specialist with DOR who was working on this audit and
25 has attended training on sales suppression software, is an expert on the characteristics of
26 sale suppression software and the resulting records obtained from a restaurant using

1 such software. According to this expert, sales suppression software was being used at
2 Tacos Guaymas of West Seattle, Tacos Guaymas of Marysville at Fremont, and Tacos
3 Guaymas of Marysville.

4 The DOR auditor determined that SALVADOR SAHAGUN owed substantial sums of
5 sales taxes to DOR. These amounts include the following:

- 6 1. For Tacos Guaymas of West Seattle (King County): \$178,575;
- 7 2. For Tacos Guaymas Broadway (King County): \$78,517;
- 8 3. For Tacos Guaymas Lynnwood (Snohomish County): \$43,339;
- 9 4. For Tacos Guaymas Greenlake (King County): \$1,121,356;
- 10 5. For Tacos Guaymas of Marysville (Snohomish County): \$1,996,250;
- 11 6. For Tacos Guaymas of Marysville at Fremont (King County): \$2,197,460.

12 The total amount of sales taxes that had not been remitted to the DOR by
13 SALVADOR SAHAGUN is \$5,615,497.

14 The auditor in this case was able to verify that SAHAGUN personally runs each of these
15 restaurants. SAHAGUN admitted to the auditor that he personally visits each restaurant every
16 day or every other day. According to SAHAGUN, the employees that close the restaurants each
17 day leave the cash received in a secure location in the back office. According to SAHAGUN, he
18 gathers the cash and reviews the prior day's sales.

19 I certified under penalty of perjury under the laws of the State of Washington that the
20 foregoing is true and correct.

21 DATED, this 1st day of March, 2018.

22
23 *Andrew R. Hamilton*

24 ANDREW R. HAMILTON, WSBA # 8312
25 Assistant Attorney General
26

SUPERFORM

CCN/JCN NUMBER

B/A NUMBER

PCN NUMBER

AGENCY: DEPARTMENT OF REVENUE CITY OF

18-1-00591-1

CASE NUMBER

10761065

FILE NUMBER

S U S P E C T D A T A	DATE OF ARREST/TIME N/A.	BOOKING DATE/TIME N/A.	ARREST LOCATION N/A.							
	NAME (LAST, FIRST, MIDDLE/JR., SR., 1 ST , 2 ND) Sahagun, Salvador			ALIAS, NICKNAMES						
	IDENTITY IN DOUBT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	DOB 12-25-1960	SEX M	RACE H	HGT 5'10"	WGT 235	EYES BRN	HAIR	SKIN TONE	
	SCARS, MARKS, TATTOOS, DEFORMITIES							ARMED/DANGEROUS YES <input type="checkbox"/> NO <input type="checkbox"/>		
	LAST KNOWN ADDRESS 24204 23rd Avenue SE, Bothell, WA 98021			CITY	STATE	ZIP	RESIDENCE PHONE		BUSINESS PHONE	CITIZENSHIP
	OCCUPATION Unknown		EMPLOYER, SCHOOL (ADDRESS, SHOP/UNION NUMBER) Unknown					SOCIAL SECURITY NUMBER		
	DRIVER'S LICENSE #		STATE WA	AFIS #		FBI #		STATE ID #		
	VEHICLE LICENSE #	STATE	YEAR	MAKE	MODEL	VEHICLE LOCATION		TOW COMPANY		
	PERSON TO BE CONTACTED IN CASE OF EMERGENCY			RELATIONSHIP		ADDRESS		CITY	STATE	PHONE
	O F F E N S E D A T A	1) OFFENSE <input type="checkbox"/> DV Theft in the First Degree		RCW/ORD# RCW 9A.56.030		COURT/CAU#		CITATION #		
2) OFFENSE <input type="checkbox"/> DV Theft in the First Degree		RCW/ORD# RCW 9A.56.030		COURT/CAU#		CITATION #				
3) OFFENSE <input type="checkbox"/> DV Theft in the First Degree		RCW/ORD# RCW 9A.56.030		COURT/CAU#		CITATION #				
4) OFFENSE <input type="checkbox"/> DV Theft in the First Degree		RCW/ORD# RCW 9A.56.030		COURT/CAU#		CITATION #				
ANY OTHER ADDITIONAL CHARGES 2 Cts. of RCW 82.32.290(4)(a)			CRIMINAL TRAFFIC CITATION ATTACHED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		ACCOMPLICES					
P R O P E R T Y	LIST VALUABLE ITEMS OR PROPERTY LEFT FOR ARRESTEE AT JAIL									
	LIST VALUABLE ITEMS OR PROPERTY ENTERED INTO EVIDENCE YES <input type="checkbox"/> NO <input type="checkbox"/> IF YES DESCRIBE: (SIMPLE DESCRIPTION, IDENTIFYING MARKS, SERIAL #)									
	TOTAL CASH OF ARRESTEE \$		WAS CASH TAKEN INTO EVIDENCE? YES <input type="checkbox"/> NO <input type="checkbox"/> AMOUNT: \$			SIGNATURE OF JAIL STAFF RECEIVING ITEMS/SERIAL #				
O F F	ARRESTING OFFICER/SERIAL #			TRANSPORTING OFFICER/SERIAL #			SUPERVISOR SIGNATURE/SERIAL #			
	SUPERFORM COMPLETED BY (SIGNATURE/SERIAL #) <i>Andrew R. Hamilton</i>				CONTACT PERSON FOR ADDITIONAL INFORMATION (NAME/SERIAL #/PHONE) Andrew Hamilton, 206-464-6430					
C O U R T F I L E	MISDEMEANOR BOOKINGS: Complete to this line. FELONY BOOKINGS: Complete both sides. OBJECTION TO RELEASE (MISDEMEANOR OR FELONY) IS ON REVERSE SIDE.									
	SUPERIOR COURT <input type="checkbox"/>		IN CUSTODY		COURT CAUSE (STAMP OR WRITE)					
	FILING INFO. <input type="checkbox"/>		AT LARGE							
COURT/DIST.		DIST. CT.		SUP. CT. DATE		WARRANT NUMBER				
CT.NO.		BOND \$								
W A R R A N T I N F O. / E X T R A D I T E	WARRANT DATE		OFF CODE OFFENSE			AMOUNT OF BAIL \$		FELONY <input type="checkbox"/>	BENCH <input type="checkbox"/>	
								MISD <input type="checkbox"/>	ARREST <input type="checkbox"/>	
	POLICE AGENCY ISSUING			COURT			WARRANT RELEASED TO: SERIAL UNIT DATE TIME			
	PERSON APPROVING EXTRADITION			SEAKING-LOCAL ONLY WACIC-STATE WIDE <input type="checkbox"/>		NCIC-WILL EXTRADITE FROM ID & OR ONLY <input type="checkbox"/>		NCIC-WILL EXTRADITE FROM OR, ID, MT, WY, CA, NV, UT, CO, AZ, NM, HI, AK <input type="checkbox"/>		NCIC-WILL EXTRADITE FROM ALL 50 STATES <input type="checkbox"/>
CCN# _____		DOE _____		C		DOC _____				
WAC# _____		TOE _____		E		TOC _____				
NIC# _____		OP# _____		A		OP# _____				
				R						
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SUSPECT NAME: Sahagun, Salvador

18-1-00591-1
CASE NUMBER

STATEMENT OF PROBABLE CAUSE: NON-VUCSA FELONY

CONCISELY SET FORTH FACTS SHOWING PROBABLE CAUSE FOR EACH ELEMENT OF THE OFFENSE AND THAT THE SUSPECT COMMITTED THE OFFENSE. IF NOT PROVIDED, THE SUSPECT WILL BE AUTOMATICALLY RELEASED. INDICATE ANY WEAPON INVOLVED. (DRUG CRIME CERTIFICATE BELOW.)

ON **AT** , **WITHIN THE** , **COUNTY OF KING, STATE OF WASHINGTON, THE FOLLOWING DID OCCUR:**

See signed Affidavit for Determination of Probable Cause

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I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

REQUEST 72-HOUR RUSH FILE?	
YES <input type="checkbox"/>	NO <input type="checkbox"/>
ANTICIPATED FILING DATE	

DATE AND PLACE

SIGNATURE/AGENCY _____

DRUG CRIME CERTIFICATE

Part I: On (DATE) the suspect (SUSPECT'S NAME) DELIVERED POSSESSED WITH INTENT TO DELIVER/MANUFACTURE POSSESSED what the undersigned officer (OFFICER'S NAME) based on training and experience, believes to be (approximate quantity and type of controlled substance) (QUANTITY AND TYPE OF SUBSTANCE). Approximate street value of the controlled substance is (value of drug) \$

Part II: FACTS INDICATING THE SUSPECT DELIVERED POSSESSED WITH INTENT TO DELIVER/MANUFACTURE or POSSESSED THE CONTROLLED SUBSTANCE:

On (date) at (time) within the , County of King, State of Washington,

My source of information about this crime (e.g., myself, other person with firsthand knowledge)

Other Facts:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date and Place:

Signature/Agency:

REQUEST 72-HOUR RUSH FILE? YES <input type="checkbox"/> NO <input type="checkbox"/>	SODA ZONE YES <input type="checkbox"/> NO <input type="checkbox"/>	DRUG FREE ZONE? Exact location is required: YES <input type="checkbox"/> NO <input type="checkbox"/>
ANTICIPATED FILING DATE	LAB WORK REQUESTED? (Date/Type)	

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LAW ENFORCEMENT OBJECT TO RELEASE? YES NO . IF YES, EXPLAIN WHY SAFETY OF INDIVIDUAL OR PUBLIC WILL BE THREATENED IF SUSPECT IS RELEASED ON BAIL OR RECOGNIZANCE (CONSIDER HISTORY OF VIOLENCE, MENTAL ILLNESS, DRUG DEPENDENCY, DRUG DEALING, DOCUMENTED GANG MEMBER, FAILURE TO APPEAR, LACK OF TIES TO COMMUNITY). INCLUDE FARR GUIDELINES. DESCRIBE TYPE OF WEAPON. BE SPECIFIC.

TIES TO COMMUNITY (MARITAL STATUS, TIME IN COUNTY, ETC.)

CONVICTION RECORD:

SUBJECT ARMED/DANGEROUS SUSPECT IDENTITY IN QUESTION WARRANT(S) FOR FTA
 HISTORY OF FTA'S (LIST)

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PRELIMINARY APPEARANCE DATE	JUDGE	BAIL AMOUNT \$		
RETURN DATE	CONDITIONS	P.R. Y/N	RETURNED Y/N	EXCUSED Y/N

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