

FILED

MAR 07 2018

**SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.**

**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
Plaintiff,
v.
SALVADOR SAHAGUN,
Defendant.

NO. **18 1 00704 31**

**AFFIDAVIT FOR
DETERMINATION OF
PROBABLE CAUSE**

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
14 believe that SALVADOR SAHAGUN has committed the crimes of Theft in the First
15 Degree (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
17 County and 1 count in Snohomish County, during the time frame of January 2012 through
18 December 31, 2016.

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

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

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

1 In addition, a computer audit specialist who was working on this audit has attended
2 training on sales suppression software and is an expert on the characteristics of sale
3 suppression software and the resulting records obtained from a restaurant using such
4 software. According to this expert, sales suppression software was being used at Tacos
5 Guaymas of West Seattle, Tacos Guaymas of Marysville at Fremont, and Tacos
6 Guaymas of Marysville.

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

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

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

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

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1 I certify under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

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

4 *Andrew R. Hamilton*

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6 ANDREW R. HAMILTON, WSBA # 8312
7 Assistant Attorney General
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