

1 STEVEN F. GRUEL (CSBN 213148)
2 655 Montgomery Street, Suite 1700
3 San Francisco, California 94122
4 Telephone Number (415) 989-1253
5 Fax Number (415) 576-1442

6 MICHAEL H. ARTAN (CSBN 97393)
7 1 Wilshire Blvd., Suite 2200
8 Los Angeles, California 90017
9 Telephone Number (213) 688-0370
10 Fax Number (213) 627-9201

11 Counsel for Anthony Pellicano

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

No. CR-05-01046-DSF

15 Plaintiff,

**SUPPLEMENT TO ANTHONY
PELLICANO'S REPLY RE
TERRY CHRISTENSEN'S
MOTION TO COMPEL
DISCOVERY; DECLARATION
OF LYNDA LARSEN**

16 vs.

17 ANTHONY PELLICANO, et al.

Honorable Dale S. Fischer
Date: March 19, 2007
Time: 8:30 a.m.

18 Defendants.
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1 TO THE CLERK OF COURT, PARTIES, AND COUNSEL:
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3 Defendant Anthony Pellicano submits the following supplement as a further reply
4 to the Government's Opposition to Terry Christensen's Motion to Compel Discovery,
5 presently set for March 19, 2007.¹

6 This supplement is based on the points and authorities below, the Declaration of
7 Lynda Larsen, below, the Under Seal Declaration of Lynda Larsen In Support of
8 Supplement to Anthony Pellicano's Reply Re Terry Christensen's Motion to Compel²,
9 filed separately, the record of this case and any additional argument and evidence the
10 Court considers.
11

12 Respectfully Submitted,

13 /s/

14 Dated: March 14, 2007

15 STEVEN F. GRUEL
16 MICHAEL H. ARTAN

17 Counsel for Anthony Pellicano
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24 ¹ Mr. Pellicano joined in Mr. Christensen's motion to compel on February 24, 2007 and filed a reply in
25 support of the joinder on February 26, 2007.

26 ² Under separate cover, defendant will seek leave of court to allow the late filing of this Supplement and
27 the Under Seal Declaration of Lynda Larsen In Support of Supplement to Anthony Pellicano's Reply Re
28 Terry Christensen's Motion to Compel.

1 **SUPPLEMENT TO ANTHONY PELLICANO’S REPLY RE TERRY**
2 **CHRISTENSEN’S MOTION TO COMPEL**

3
4 **I. INTRODUCTION**

5 Defendant Terry Christensen’s Reply to the Government’s Opposition to Mr.
6 Christensen’s Motion to Compel Discovery includes points and authorities supporting
7 production of FBI reports and other materials pertaining to the CW and the CW’s
8 interaction with attorney Barry Levin. This supplement is intended to bolster the
9 defense’s request for materials pertaining to the CW and other discovery sought.³

10 The CW was clearly involved in attempts to wrongfully sell tapes of his
11 conversations with Alex Proctor to counsel for Julius Nasso—an adversary of Steven
12 Seagal. The tapes he was planning on selling would only have had value if Seagal were
13 implicated in misconduct. The CW therefore had a vested interest in having Seagal’s
14 name implicated in the Busch incident. Because there was public knowledge of Seagal’s
15 past dealings with Pellicano, the CW had a motivation to implicate Pellicano and Seagal
16 and tape-record Proctor using their names in such a context.⁴ The Nasso connection in
17 this matter therefore becomes material and is discussed below in relation to the CW and
18 in relation to matters pertaining to the alleged threats to writer Ned Zeman.

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21 ³ This supplement is being filed late because its filing was prompted by the receipt of an FBI report
22 which had not been turned over in discovery. The government has responded to inquiry about this 302
23 report by contending that it was not discoverable material. The history related to this 302 is contained in
24 two Exhibits submitted as Exhibits A and B under separate cover entitled Exhibits In Support of
25 Supplement to Anthony Pellicano’s Reply Re Terry Christensen’s Motion to Compel Discovery.
26 Exhibit A is a March 9, 2007 letter from undersigned counsel to counsel for the government; Exhibit B
27 is a March 12, 2007 from government counsel to the government.

28 ⁴ However, Seagal and Pellicano had severed ties long before any of the incidents at hand and they were
actually adversaries at the time in question.

1 It appears, from the government’s position as to the recently obtained 302 report,
2 and from the chronology of events described below, that the government may be taking a
3 view of its discovery obligations that is too narrow. Recently revised, the United States
4 Attorney Manual has expanded the obligation of disclosure of information to include
5 “information that...casts a substantial doubt upon the accuracy of any evidence...[that]
6 might have a significant bearing on the admissibility of prosecution evidence.”⁵ The
7 policy extends to disclosure of information “regardless of whether the information
8 subject to disclosure would itself constitute admissible evidence.”⁶

9 Apparently, the government has not fully disclosed details about the CW that cast a
10 “substantial doubt” on his credibility, insofar as his relationship with the government and
11 relating to his relationship with Alex Proctor. It follows that the government should fully
12 disclose information pertaining to the CW’s activities for the government.

14 **II. FACTS RELATING TO THIS SUPPLEMENT**

15 The facts relating to this supplement are set forth in detail in the Declaration of
16 Lynda Larsen, below, and the Under Seal Declaration of Lynda Larsen In Support of
17 Supplement to Anthony Pellicano’s Reply Re Terry Christensen’s Motion to Compel,⁷
18 filed separately.

19 To help set the context of Mr. Pellicano’s contentions, the defense additionally
20 offers the following background information⁸:

22 ⁵ USAM 9-5.001.C.2.

23 ⁶ USAM 9-5.001.C.3.

24 ⁷ Under separate cover, defendant will seek leave of court to allow the late filing of this Supplement and
25 the Under Seal Declaration of Lynda Larsen In Support of Supplement to Anthony Pellicano’s Reply Re
26 Terry Christensen’s Motion to Compel.

27 ⁸ As the Court has been made aware from prior defense pleadings, the various searches of Mr.
28 Pellicano’s premises will be challenged pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). Under

1 The search warrant affidavit in support of the first search, executed by FBI Agent
2 Stan Ornellas (November 19, 2002 “Amended” Search Warrant⁹), set forth two general
3 narratives:

- 4 • The first narrative arises from an exposition of various communications
5 between the CW and an unlicensed private investigator named Alex Proctor,
6 some of which were taped. Proctor is said to have claimed that actor Steven
7 Seagal had hired private investigator Anthony Pellicano to threaten a reporter
8 who was preparing an article about Segal. Proctor also said that he was hired
9 to set the reporter’s car on fire but instead placed a fish and rose on the car,
10 with a cardboard sign on the windshield with the word “stop” and put a bullet
11 hole in the windshield. This narrative section included Agent Ornellas’s
12 account of a search of Proctor’s home and telephone records of Proctor’s cell
13 phone.
- 14 • The next narrative section in the November 19th Affidavit relates to allegations
15 of threats made to writer Ned Zeman, who was writing about alleged Seagal
16 associations with organized crime. Zeman reported two incidents that were
17 presented in the affidavit in a manner suggesting that Zeman was being
18 threatened in connection with his work on the Seagal article. In the first
19 incident, Zeman found a decapitated toy soldier at his front door on August 26,
20 2002. In the second incident, Zeman said he was driving north on Laurel
21 Canyon Boulevard and noticed a car behind him with flashing headlights. In
22 turn, Zeman slowed down and pulled to one side. The other vehicle pulled
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24
25 *Franks*, the Court determines whether there was probable cause to search by examining the validity of a
26 search warrant affidavit after excising deliberate or reckless misrepresentation and inserting material
27 omissions known to the affiant at the time the affidavit was submitted to the magistrate.

28 ⁹ Agent Ornellas’s affidavit in support of that search warrant will be referred to as the “November 19th
Affidavit.”

1 alongside. The passenger window of the other vehicle went down and the
2 driver flashed a flashlight at Zeman, and a passenger pointed a firearm at
3 Zeman. Zeman ducked, heard a trigger click, and heard the driver say “bang”
4 or “bam” and the passenger say “stop” or “stop it” before the car sped away.
5 “Bill McMullin”, a New York private investigator, reportedly told Ornellas that
6 he had a client that claimed that the person who pointed the weapon at Zeman
7 was “John Rottger,” a former Navy SEAL, who was a good friend of Seagal
8 and had appeared in a few of Seagal’s movies. Later, Ornellas showed Zeman
9 a photo-display of six men, including a DMV photo of “John Rottger, Jr.”
10 Zeman picked out John Rottger, Jr. as having looked like the passenger who
11 pointed the firearm at him, but Zeman added that he was not sure and needed a
12 profile photograph to be certain.

13 The overall picture portrayed by Agent Ornellas’s affidavit was that actor Steven
14 Seagal was actively seeking to illegally threaten writers working on Seagal stories and
15 that Anthony Pellicano was hired to accomplish at least one of the threats.

16 To challenge the validity of the first search, the defense will show that Agent
17 Ornellas knew that the picture portrayed in his affidavit was materially false in numerous
18 ways known to Agent Ornellas, including, the following:

- 19 • Alex Proctor was lying about his purported role in vandalizing Anita
20 Busch’s car because his descriptions to the CW about what happened
21 were materially wrong.
- 22 • The CW was attempting to sell a copy of a Proctor tape recording to
23 lawyers representing Julius R. Nasso.¹⁰ Nasso was a total adversary of
24 Seagal—Nasso had sued Seagal for reneging on movie contracts and
25

26 ¹⁰ In the government’s prior prosecution of Mr. Pellicano (*United States v. Anthony Pellicano*, Central District of
27 California Case Number CR-02-1278-DT), counsel for the government gave a description of the Agent Ornellas’s
28 degree of knowledge of the CW’s actions.

1 Seagal was cooperating with FBI authorities in the Eastern District of
2 New York in what resulted in a prosecution in which Nasso was
3 convicted in connection with an extortion of Seagal.¹¹

- 4 • The photograph of “John Rottger, Jr.” in the photo-display was not the
5 Navy SEAL friend of Seagal described by Ornellas, but instead was
6 Rottger’s son. Additionally, the six-pack used for the “identification”
7 contains notations that are inconsistent with Zeman having actually
8 picked out anyone.

9
10 **III. THE INFORMATION SOUGHT IS MATERIAL, CASTS A SUBSTANTIAL**
11 **DOUBT ON THE ACCURACY OF THE CW AND ON THE ADMISSIBILITY OF**
12 **THE ITEMS SEIZED DURING THE PELLICANO SEARCHES.**

13 Rule 16 (a)(1)(E)(i), of the Federal Rules of Criminal Procedure, requires the
14 government to produce any item that “is material to preparing the defense.”
15 Additionally, the United States Attorney Manual requires U.S. Attorneys to produce
16 “information that either casts a substantial doubt upon the accuracy of any
17 evidence...[that] might have a significant bearing on the admissibility of prosecution
18 evidence.”¹² The policy extends to disclosure of information “regardless of whether the
19 information subject to disclosure would itself constitute admissible evidence.”¹³

20 The chronology of events set forth in the declarations by Lynda Larsen portrays a
21 scenario in which the CW was working for the government in trying to gain evidence
22 against Alex Proctor and against others. However, the CW was also seeking to sell
23 information and evidence he was obtaining for the government. The fact that he was
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25 ¹¹ A tape recording between the CW and one of Nasso’s lawyers was eventually turned over to the defense, but
26 not until after the defense requested the tape, having learned about it from one of Nasso’s lawyers.

27 ¹² USAM 9-5.001.C.2.

28 ¹³ USAM 9-5.001.C.3.

1 seeking to sell the evidence suggests that he was motivated to manipulate the evidence—
2 his interactions with Proctor—to make it more valuable. The CW was under indictment
3 and cooperating for the government. At least two substantial motivations existed for the
4 CW to “make” evidence. It follows that the government should produce all its available
5 information relating to the CW.
6

7 **IV. CONCLUSION**

8 For the additional reasons set forth in this supplement and filings concurrent to this
9 supplement, the defense urges the Court to order production of the CW discovery at
10 issue.
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12 Respectfully Submitted,

13 /s/

14 Dated: March 14, 2007

15 STEVEN F. GRUEL
16 MICHAEL H. ARTAN

17 Counsel for Anthony Pellicano
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1 **DECLARATION OF LYNDA LARSEN**

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3 I, Lynda Larsen, declare:

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- 5 1. I am a private investigator licensed in the State of California. I am working on
6 behalf of counsel for defendant Anthony Pellicano in the defense of this case and
7 I make this declaration in support of the above supplement to a discovery motion
8 in which Anthony Pellicano has joined. Unless otherwise stated, the facts below
9 are based on my personal knowledge of the interviews and records described
10 below. If called as a witness I could and would testify to the truth of the matters
11 set forth below.
 - 12 2. Information that is arguably the subject of this Court’s Protective Order is being
13 filed under separate cover and under seal in the Under Seal Declaration of Lynda
14 Larsen In Support of Supplement to Anthony Pellicano’s Reply Re Terry
15 Christensen’s Motion to Compel (“Under Seal Declaration”). Exhibits supporting
16 the contents of this declaration are being filed separately.
 - 17 3. I believe the Court is aware from prior pleadings that Mr. Pellicano was
18 previously prosecuted in this Court in the case U.S.A. v. Anthony Pellicano, Case
19 No. CR-02-1278-DT (“2002 Case”). I worked as a private investigator on behalf
20 of the defense in the 2002 Case. The records of the 2002 Case show that Mr.
21 Pellicano challenged searches of his office and storage areas during pretrial
22 proceedings. The Ninth Circuit Court of Appeal ultimately upheld the searches
23 based on the Leon “good faith” exception, (U.S.A. v. Anthony Pellicano, Case
24 No. 04-50043). Substantial portions of the government’s discovery in the case at
25 hand were seized during the same searches that were at issue in the 2002 Case.
 - 26 4. I have reviewed the defense records and discovery pertaining to the 2002 Case.
27 Since the 2002 Case, it appears that new facts that have been discovered,
28 additional discovery has been provided by the government and further

1 information has been requested through discovery, *all of which are pertinent to*
2 *determining* whether FBI Special Agent Stanley Ornellas, the affiant for
3 November 19, 2002 “Amended” Search Warrant¹⁴, willfully and knowingly
4 omitted material facts from the affidavit and misstated material facts to an extent
5 that the Leon exception cannot stand.

- 6 5. The following areas in this declaration are aimed at whether additional discovery
7 should be turned over on the issue of whether there were material omissions and
8 misstatements in the November 19th Affidavit:
- 9 a) In the undercover tapes between the CW and Alex Proctor, Proctor *incorrectly*
10 describes the manner in which Anita Busch’s car was vandalized, suggesting
11 that he was not at the scene and instead was simply boasting to a fellow drug-
12 dealer.¹⁵
- 13 b) A Motion to Compel the Government to File a Rule 35 (b) Motion filed on July
14 13, 2004, in the case U.S.A. v. Julius R. Nasso et al., Eastern District of New
15 York, Case No.02 CR 606 (FB) (“Nasso Motion”), suggests that Agent
16 Ornellas *knew* prior to the execution of the November 19th Affidavit that the
17 CW obstructed justice by offering to sell government evidence to Nasso
18 defense lawyers.¹⁶ The Nasso Motion sets forth the extent of the contacts
19 Agent Ornellas had with the Nasso defense private investigators, which
20 provided detailed information relating to the CW’s obstruction of justice. As
21

22 ¹⁴ Agent Ornellas’s affidavit in support of that search warrant will be referred to as the “November 19th
23 Affidavit.”

24 ¹⁵ This issue has already been raised in Mr. Christensen’s motion. However, additional details relating
25 to this issue are set forth below and in the Under Seal Declaration.

26 ¹⁶ In the 2002 Case, the government contended that Agent Ornellas did not actually know of the CW’s
27 misconduct because the CW simply denied it during a September 13, 2002 meeting, and subsequent
28 telephone calls.

1 reported throughout the media and by way of background, actor Steven Seagal
2 was engaged in multi-million dollar litigation against Nasso and Seagal was
3 cooperating with federal law enforcement officials against Nasso.

- 4 c) The November 19th Affidavit, included assertions as to threats made toward
5 Ned Zeman, allegedly by John Rottger (and purportedly on behalf of Mr.
6 Pellicano). However, the description of the perpetrator provided by Mr. Zeman
7 did not match Mr. Rottger, information that would have been known by Agent
8 Ornellas. Additionally, the Nasso Motion indicates that Agent Ornellas was
9 given descriptive information for Mr. Rottger that contradicts Mr. Zeman's
10 account and contradicts the truthfulness of Agent Ornellas's account of the
11 "six-pack" photographic line-up done with Mr. Zeman.
- 12 6. From the investigative work I conducted on behalf of the defense, I have the
13 following information to offer as to the above issues:

14
15 ***Alex Proctor's Account of the Damage to Anita Busch's Car Was Inconsistent With***
16 ***the Actual Damage to Her Car.***

- 17 7. The November 19th Affidavit contains assertions by Proctor in which he
18 purported to describe what he "did" to Anita Busch's car. Among the various
19 statements referred to in the Affidavit, Proctor's describes having "shot up" Ms.
20 Busch's car.
- 21 8. It appears from official accounts that Ms. Busch's car was never shot with a
22 bullet.
- 23 9. In the November 19th Affidavit, Agent Ornellas described the damage to Anita
24 Busch's car as, "a shatter mark just below the note."¹⁷
- 25 10. Agent Ornellas was arguably aware that there were no such gunshots in Ms.
26 Busch's car at the time he presented the November 19th Affidavit.

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¹⁷ Paragraph 9, Item C, Page 8 of the November 19th Affidavit.

1 11. Other information pertaining to this issue is found in the Under Seal Declaration.
2

3 ***The Nasso Motion and Witnesses Confirm That the CW Asked Nasso Defense***
4 ***Attorneys Barry Levin and Jack Litman for Money in Return for Tape Recordings***
5 ***of Alex Proctor.***

6 12. The assertions in this section are based on information contained in the Nasso
7 Motion, other identified pleadings and, when indicated, interviews of witnesses.

8 13. The November 19th Affidavit makes no mention that the CW attempted to extort
9 or obtain money from Nasso lawyers. However, as set forth below, there is
10 additional information suggesting that Agent Ornellas should have known, prior
11 to the November 19th Affidavit, that the CW contacted the Nasso defense lawyers
12 and asked for money in exchange for information about Proctor and the Anita
13 Busch matter.

14 14. During the period in which the CW was seeking money from the Nasso lawyers,
15 he was also calling Mr. Pellicano directly.

16 15. In the course of the 2002 Case, Mr. Pellicano's previous attorney, Donald Re,
17 contended that the CW attempted to download onto his personal computer the
18 CW's July 3, 2002 recording of Alex Proctor, and later, in July 2002, asked
19 Nasso defense lawyer Barry Levin for \$30,000 in exchange for that recording.¹⁸

20 16. In the government's response to Mr. Re's contention dated March 31, 2003,
21 Assistant United States Attorney Daniel Saunders wrote, "The interview reports
22 that defendant relies on to demonstrate the Agent's knowledge are dated January
23 22, 2003 and February 28, 2003-months after the warrant was obtained. All the
24 defendant shows the government knew as of the time of the affidavit is that CW
25 had admitted briefly discussing the investigation with the defense attorney, that
26

27 ¹⁸ Defendant's Notice of Motion and Motion to Suppress Evidence; Quash and Traverse Search
28 Warrants; for a Taint Hearing, dated March 17, 2003, filed in the 2002 Case.

1 he had stated he did not receive money, and that he had been admonished for
2 divulging information.”¹⁹

3 17. William McMullan, a New York private investigator, and former FBI Unit Chief
4 in the Organized Crime Section at FBI Headquarters, worked for Julius Nasso as
5 his private investigator and was in close contact with Mr. Levin relating to
6 Vincent and Julius Nasso. [McMullan was described by Agent Ornellas as an
7 information source in the November 19th Affidavit.²⁰]

8 18. McMullan hired Andrew Catalan, a California private investigator, to work as
9 part of the Nasso defense team, and executed a “Statement of Contact With: Stan
10 Ornellas Special Agent FBI,” notarized on July 9, 2004 and filed on July 13, 2004
11 in support of the Nasso Motion (“Catalan Statement”).

12 19. According to the Catalan Statement, Catalan met and spoke with Agent Ornellas
13 on October 24, 2002, and advised Agent Ornellas of Mr. Catalan’s meeting with
14 Mr. Patterson, which had occurred a few days earlier. Catalan wrote “Mr.
15 Ornellus (sic) was also provided a brief regarding this investigator’s interview
16 with (*name of CW*), a few days prior to this meeting. Mr. Ornellas was offered
17 any other information pertinent to the case, including contact with our client in
18 the East Coast. I believe they did speak.”²¹

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21 ¹⁹ Government’s Opposition to Defendant’s Motion to Suppress Evidence, March 31, 2003, pages 22-
22 23.

23 ²⁰ The only mention relating to McMullan in the November 19th Affidavit is in paragraph 22, and it is in
24 reference to a conversation on September 24, 2002, about the false identification of John Rottger.

25 ²¹ “Statement of Contact With: Stan Ornellas Special Agent FBI,” notarized July 9, 2004 that was
26 attached to Robert Hantman’s Notice of Motion, 02 CR 606 (B), United States District Court, Eastern
27 District of New York, which was filed July 13, 2004. A true copy of this document is submitted as
28 Exhibit C under separate cover entitled Exhibits In Support of Supplement to Anthony Pellicano’s Reply
Re Terry Christensen’s Motion to Compel Discovery.

1 20. In Mr. McMullan's Affidavit, dated July 12, 2004, he wrote "Mr. Ornellas of the
2 FBI in Los Angeles was later made aware of this telephone conversation and
3 advised Mr. Catalan to inform Mr. Levin to cease contact with his (Mr. Ornellas')
4 witness. Mr. Catalan and I did not contact [CW] again. I forwarded Mr.
5 Ornellas's request to Mr. Nasso's attorney at the time, Russell Gioiello. I asked
6 Mr. Gioiella to inform Mr. Levin of Mr. Ornellas's request." Later in the
7 Affidavit, Mr. McMullan writes, "On October 24, 2002, I personally spoke by
8 phone to Mr. Ornellas for approximately four (4) minutes and confirmed the
9 information he was receiving came from Mr. Nasso (310-996-4302 W. Los
10 Angeles 11:49 am Direct 4.28 min.)."²²

11 21. In July 2002, the CW called attorney Barry Levin, counsel for Vincent Nasso, and
12 asked for \$30,000, to "dirty up Seagal." [Seagal was Steven Seagal, as described
13 above, a well-known witness in the prosecution of Julius Nasso, brother of
14 Vincent Nasso.] The CW called Mr. Levin believing that Mr. Levin represented
15 Julius Nasso. The commodity being offered by the CW was tape-recording(s)
16 purported to implicate Mr. Seagal in illegal activity relating to Alex Proctor.²³
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19 ²² Affidavit of William McMullan in Support of Julius R. Nasso's Motion to Compel the Government to
20 File a Rule 35(b) Motion, CR 02-606 (FB), United States District of New York, an attachment to Robert
21 Hantman's Notice of Motion filed July 13, 2004. A true copy of this document is submitted as Exhibit
22 D under separate cover entitled Exhibits In Support of Supplement to Anthony Pellicano's Reply Re
23 Terry Christensen's Motion to Compel Discovery.

24 ²³ On September 18, 2006, and September 29, 2006, I interviewed Barry Levin, who in 2002 represented
25 Vincent Nasso, brother to Julius Nasso. Mr. Levin said the CW had contacted him on a couple of
26 occasions in the summer of 2002 and that the CW asked for \$30,000 "to dirty up Seagal." On August 29,
27 2002, Levin and McMullan tape-recorded a call with the CW. Mr. Levin provided me with a transcript
28 of the recording. Mr. Levin said he later provided a copy of the transcript and the original recording to

- 1 22. In August 2002, Mr. McMullan and Mr. Levin recorded a conversation with the
2 CW in which the earlier conversation is discussed.²⁴ As set forth in the Under
3 Seal Declaration, Ornellas would have learned of this breach by September 13,
4 2002.
- 5 23. On October 2, 2006, I interviewed Mr. McMullan, and he acknowledged
6 participating in the August 29, 2002 recording of the CW. Mr. McMullan told me
7 that the confidential witness first tried to extort Julius Nasso's lawyer, Jack
8 Litman, for \$14,000 on or about July 10, 2002.
- 9 24. Telephone billing records for the CW obtained through subpoena, and
10 information from William McMullan, confirm that calls were made from the CW
11 to attorneys Jack Litman and Barry Levin.²⁵ An Affidavit of William McMullan
12 contained within the Nasso Motion states that McMullan and Agent Ornellas
13 spoke by telephone on October 24, 2002 for four minutes at 11:49 a.m. (EST).
14 Mr. McMullan's affidavit also confirms that Agent Ornellas met with Mr. Catalan
15 at the Versailles Restaurant later that day at 6:30 p.m. (PST).
- 16 25. Also records show that there were at least seven calls from the CW to Anthony
17 Pellicano's office. On July 29, 2002, the CW called Mr. Pellicano's office at 2:22
18 p.m. for two minutes, and at 2:24 p.m. for one minute. Later that day, the CW
19 called the FBI at 5:50 p.m. for four minutes. *There is no FBI CW 302 for this*
20 *date or these calls.* On September 3, 2002, the CW called Mr. Pellicano's office
21

22 AUSA Saunders "subject to a subpoena." The government supplied the defense with this tape, but only
23 after the government was advised that Mr. Levin acknowledged having sent a copy to AUSA Saunders.

24 ²⁴ I have been told that New York is a "one-party consent" state as to recordings.

25 ²⁵ A true copy of the excerpts of the CW's telephone records pertaining document to this Supplement is
26 submitted as Exhibit E under separate cover entitled Exhibits In Support of Supplement to Anthony
27 Pellicano's Reply Re Terry Christensen's Motion to Compel Discovery.
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1 at 9:42 a.m. for thirteen minutes, and at 10:04 a.m. for eleven minutes. On this
2 same date, the CW's records show calls to the FBI at 11:09 a.m., at 11:10 a.m.,
3 and at 11:12 a.m. *There is no FBI CW 302 for this date or these calls.*

- 4 26. Computer records show that additional calls were made from the CW to Mr.
5 Pellicano's office, which are not reflected on the telephone and cellular bills we
6 received to date. One of these calls occurred on August 27, 2002, made from the
7 CW to Mr. Pellicano's office at 10:56 a.m. for thirteen minutes, thirty seconds.
8 This call was made after two calls the CW had with the FBI at 9:39 a.m. for four
9 minutes and at 9:43 a.m., for four minutes, and before the CW called the FBI at
10 12:12 p.m. for six minutes. *There is no FBI CW 302 for this date or these calls.*
11 Two additional calls were made from the CW to Mr. Pellicano's office on
12 September 3, 2002, at 10:57 a.m. for thirteen minutes and fifty-four seconds, and
13 at 11:08 a.m. for forty-three seconds. On this same date, the CW's records show
14 calls to the FBI at 11:09 a.m., at 11:10 a.m., and at 11:12 a.m. *There is no FBI*
15 *CW 302 for this date or these calls.*

16
17 ***Did Agent Ornellas Know that John Rottger Did Not Match the Description Ned***
18 ***Zeman Gave of His Assailant and Did He Include a False Identification of John***
19 ***Rottger, Jr. in the Affidavit?***

- 20 27. The November 19th Affidavit asserted that on August 26, 2002, Ned Zeman was
21 reportedly threatened by an assailant who drove past him in a car, pointed a gun
22 at him and said, "stop."
23 28. As set forth in the Under Seal Declaration, Mr. Zeman's reported description of
24 the assailant was markedly different than John Rottger's description.
25 29. In paragraph 23 of the November 19th Affidavit, Agent Ornellas asserts that he
26 "showed a photo display of six individuals with similar appearances, including a
27 DMV photograph of John Rottger, Jr., in position one. After reviewing the photo
28 display, Zeman said that photograph number 1 looked like the man who had

1 pointed the gun at him, but he was not sure and needed to see a profile
2 photograph to be certain.”

3 30. I am informed and believe that the ‘6-pack’ photographic line-up shown to Mr.
4 Zeman, included a photograph of Mr. Rottger’s son, not of Mr. Rottger himself.
5 Details supporting my belief are set forth in the Under Seal Declaration.
6

7 I declare under penalty of perjury that the above is true and correct and that this
8 declaration is executed on March 15, 2007 at Los Angeles, California.

9 /s/

10 _____
11 Lynda Larsen
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