

A F F I D A V I T

I, Roxanna Behtash, being duly sworn, hereby depose and state:

**I. INTRODUCTION**

1. I am a Special Agent ("SA") of the National Oceanic and Atmospheric Administration ("NOAA"), United States Department of Commerce, and have been so employed since August 2006. During my employment with NOAA, I have conducted and participated in numerous investigations related to violations of federal and state wildlife laws, including violations of the Marine Mammal Protection Act (16 U.S.C. §§ 1361, et seq.) In addition, I have prepared and executed search warrants. I am presently assigned to NOAA's Long Beach, California field office.

**II. PREMISES TO BE SEARCHED**

2. This affidavit is made in support of an application for a search warrant commanding any SA or law enforcement officer of NOAA with appropriate investigative and technical assistance from other federal and state law enforcement agencies to search the premises described in Attachment "A" and Attachment "B," for evidence, fruits, and instrumentalities of violations of 16 U.S.C. § 1372(a)(4) (import, purchase, or sale of marine mammal product).

A. SUBJECT PREMISES ONE (THE HUMP restaurant) to be

searched is located at 3221 Donald Douglas Loop South, 3<sup>rd</sup> floor, Santa Monica, California. The premises are further described as located in a white building that is three stories tall. The building is located on the south side of the Santa Monica Airport, next to the Airport Administration Building. There is an exterior staircase with blue railings and the restaurant is on the top floor of the building. There is a glass cylindrical shaped enclosure which contains the elevator for the building which has two blue horizontal stripes. On the upper left side of the building, the word TYPHOON is written in capital letters with a red typhoon weather sign underneath it. The word Hump is written at the top of the building, above the staircase. Santa Monica Airport is written on the right side of the staircase in blue writing. The entrance to THE HUMP is on the third floor, to the right of the staircase.

B. The second premises (hereinafter the "SUBJECT PREMISES TWO") is described as a white, four-door, 1996 Mercedes vehicle with license plate number "4USS819."

### **III. PROBABLE CAUSE**

3. I am currently conducting a criminal investigation involving a restaurant business known as "THE HUMP," located at the Santa Monica Airport in Santa Monica, California. Based upon my investigation, I have probable cause to believe that THE HUMP,

and a sushi chef at THE HUMP are involved in the illegal possession and sale of marine mammal product, specifically, Sei whale meat, in violation of 16 U.S.C §§ 1372 (a) (4).

4. This affidavit is based upon my training, experience, discussions with other law enforcement personnel and with witnesses in this investigation, my review of reports and evidence in this matter, and upon the facts I have learned during this investigation. This affidavit is submitted solely to demonstrate probable cause for the requested warrant and does not set forth all of my investigation into or knowledge of this matter.

5. All whales (family Cetacea) are marine mammals and are protected under the Marine Mammal Protection Act ("MMPA"), Title 16 United States Code §§ 1361, et seq. The MMPA prohibits any person to import and possess a marine mammal or any product from that marine mammal and for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product. Based upon my expertise and training, I know it is illegal to sell whale meat in the United States. In addition, Sei whale is protected under the MMPA. In February 2010, I spoke with NOAA Fishery Management Specialist Jennifer Skidmore, and she informed me that there is no permit in existence that authorizes anyone to import, buy, or sell

whale meat in the United States.

6. A knowing violation of the MMPA by an individual is punishable by up to one year in prison and/or a fine of \$20,000.

7. Based upon my conversations with two confidential informants (hereafter individually referred to as "CW2" and "CW3"), my review of a videotape provided to me by CW3, and my investigation, I have learned that on October 1, 2009, CW2 and another confidential informant (hereafter referred to as "CW1"), both of whom are residents of the Los Angeles County area, were covertly videotaped by CW2 as they were being served Sei whale meat at THE HUMP restaurant. I have also learned that during their visit at THE HUMP the following events occurred:

A. CW1 spoke fluent Japanese and asked the waitress in Japanese if they served whale meat. The waitress told CW1 that they had whale meat and served it to both CW1 and CW2;

B. When serving CW1 and CW2 the whale meat, the waitress told CW1 in Japanese that the pieces of meat consisted of horse and whale. The waitress also used the word "whale" (in English) to identify the pieces of meat served. This statement was captured in a video and audio footage taken by CW2;

C. Once the meat was served to CW1 and CW2, CW2 collected four pieces of meat from the dish containing horse and

whale meat and placed them in a napkin. CW2 then placed the napkin containing the meat in a zip block bag and put the zip block bag inside a purse;

D. At the end of dinner, CW1 and CW2 received a receipt from THE HUMP that documented the purchase of the whale meat from the restaurant. The receipt had "whale" and "horse" hand written on it with a cost of "\$85" written next to the words "whale" and "horse;"

E. After dinner, CW1 and CW2 met with CW3 who was waiting outside of the restaurant. CW3 collected the zip block bag containing the horse and whale meat; and

F. On the following day, CW3 sent the samples of meat to Dr. Scott Baker at Oregon State University.

8. I have communicated with Dr. Scott Baker at Oregon State University by telephone on multiple occasions and by e-mail. From my communication with Dr. Baker, I have learned that he is the Associate Director of the Marine Mammal Institute at Oregon State University, for DNA identification, and that he is a professor of fisheries and wildlife and has 20 years of expertise in molecular genetics and over 30 years of expertise in Cetacean biology. Dr. Baker has also informed me that he has 16 years of experience in the genetic identification of whale and dolphin products from Japanese and Korean markets.

9. Based upon a memorandum I have reviewed from NOAA SA Roy Torres dated November 6, 2009, conversations I have had with SA Torres, email correspondence between me and Dr. Baker and between Dr. Baker and SA Torres, and phone conversations between me and Dr. Baker, I am informed that on October 30, 2009, NOAA SA Roy Torres spoke with Dr. Scott Baker of Oregon State University, and that Dr. Baker confirmed that he had analyzed the purported whale meat purchased at THE HUMP restaurant, and that he found the whale meat to be Sei whale.

10. On November 13, 2009, I sent an email to Dr. Baker containing a chain of custody form for Dr. Baker to complete pertaining to the samples he had received from CW3. In that email, I also asked Dr. Baker to send me the original container in which he received the meat samples from CW3. On November 18, 2009, I received a Fed Ex package from Dr. Baker which contained four meat samples inside a package along with the completed chain of custody form. I have caused these four samples to be stored in NOAA's Long Beach evidence locker. On November 25, 2009, I received a report from Dr. Baker by e-mail in which he states that he had analyzed the samples of meat "purchased by" CW3, and that two of the samples were found to be Sei whale. The report also indicates that two other samples were found to be cow.

11. On February 28, 2010, two confidential informants,

CW2 and another confidential informant ("CW4") went to THE HUMP and audio recorded themselves purchasing whale meat at the restaurant. CW2 and CW4 were seated at a table while three additional confidential informants, (hereafter referred to individually as "CW5," "CW6," and "CW7") were seated at the sushi bar of the restaurant and were there to observe what transpired at the table where CW2 and CW4 were seated. Based upon my conversations with CW2 and CW4, I am informed that the following events occurred during their visit:

A. CW2 and CW4 ordered THE HUMP'S Chef's Special course which included horse meat;

B. CW2 and CW4 specifically asked for whale meat;

C. The waitress told CW2 and CW4 that she had to check with the chef to make sure they had whale meat;

D. The waitress then came back to CW2 and CW4 and told them that their current bill balance was \$540 dollars, and, with the whale meat, it would be \$600 dollars;

E. The waitress then served CW2 and CW4 eight pieces of whale meat; and

F. CW2 took two pieces of the whale meat and placed them inside a napkin and put them in a purse.

12. On February 28, 2010, CW5, CW6, and CW7 were seated at THE HUMP'S sushi bar, less than 20 feet away from CW2 and CW4 who were served the whale meat. I have reviewed a memorandum of a 3-1-10 interview of CW5, prepared by NOAA SA Michelle Zetwo, and according to that memorandum, the following occurred while CW2 and CW4 were in THE HUMP restaurant on February 28, 2010:

A. CW5 observed a sushi chef slice up various pieces of sushi. The fish from which the sushi was sliced was stored behind the sushi bar but was not visible. At one point, the sushi chef told CW5 that he was slicing up horse meat;

B. After an hour or two at the restaurant, CW5 stepped outside to take a call from CW3 who was monitoring the audio recording of CW2 and CW4 and was told that CW2 and CW4 had just ordered some specialty items;

C. CW5 returned to the sushi bar and saw the sushi chef pull out a large piece of fish (the size of a human hand - as described by CW5). CW5 asked the sushi chef what he was slicing, and the chef said it was whale. CW5 asked the chef what type of whale, and the chef responded that he did not know; and

D. There were eight to ten pieces of whale meat on the plate. CW5 observed the waitress take the plate of whale meat off the sushi bar and place it on the table where CW2 and CW4 were seated.

13. CW2 received a cash receipt for \$690.32 from THE HUMP. CW2 also received an itemized receipt from THE HUMP which listed in handwriting the various foods CW2 and CW4 had ordered with a price tally of \$642.00. Among the items written on the handwritten list was an item identified as "whale."

14. After CW2 and CW4 departed THE HUMP, I collected two pieces of meat from CW2 (which CW2 indicated was whale meat) and one piece of meat from CW2 (which CW2 indicated was horse meat). I labeled these pieces of meat as evidence, and I shipped these samples of meat to NOAA Biologist Kathy Moore with the National Ocean Service Marine Forensics Lab in Charleston, South Carolina for DNA identification.

15. On March 2, 2010, NOAA Biologist Kathy Moore telephoned me and informed me that she had tested the two samples suspected to be whale, and she found that those samples were Sei whale meat.

16. On the evening of March 4, 2010, CW2 and CW4 again went to THE HUMP restaurant during the evening hours. Based upon my conversations with CW2 and CW4, and my review of the evidence obtained from that visit, I am informed that the following events took place:

A. CW2 and CW4 sat at a table at THE HUMP while

a NOAA SA, a U.S. Fish and Wildlife Service ("USFWS") SA, and one U.S. Customs and Border Protection officer sat at THE HUMP's sushi bar;

B. During their visit, CW2 ordered the chef's special, and CW2 and CW4 were asked if they wanted to try blow fish. Later, CW2 specifically requested "kujira" which I am told by a NOAA fishery service branch supervisor who is Japanese, means whale;

C. The waiter serving CW2 and CW4 then brought CW2 and CW4 a dish which he described as "whale" to CW2 and CW4; and

D. CW2 obtained samples of what was purported to be the blow fish, horse, and whale that was served.

17. Based upon my conversations with the USFWS SA and the NOAA SA, I am informed that:

A. During CW2 and CW4's visit to THE HUMP, the USFWS SA sitting at the sushi bar observed the sushi chef exit THE HUMP with what appeared to be car keys in his hand. A few minutes later, the USFWS SA, while watching from a stairwell outside THE HUMP restaurant then saw the sushi chef walking back to THE HUMP restaurant.

B. From the direction in which the sushi chef was seen

walking back to THE HUMP restaurant, it appeared to the USFWS SA that the sushi chef was walking away from a white Mercedes vehicle;

C. The USFWS SA also saw that as the sushi chef walked back to the restaurant he was carrying a clear wrapped plastic package. As the sushi chef walked past the USFWS SA, the USFWS SA observed that the package appeared to contain a meat product;

D. As the USFWS SA returned to the sushi bar, he saw the sushi chef and the clear wrapped package still un-opened in front of the sushi chef. The USFWS SA then observed the sushi chef open the clear wrapped package, remove the meat product and put it on a cutting board at the sushi bar. The USFWS SA observed the sushi chef slice the meat product and slice it further into very small strips;

E. A customer asked the sushi chef what the meat product was, but the sushi chef did not respond. Then the USFWS SA and others at the sushi bar openly speculated what the meat product was. A customer to the right of the USFWS SA then asked the sushi chef about the meat product, and the sushi chef quietly said that it was "whale;"

F. The USFWS SA also observed the sliced meat product being placed on a plate and brought by a server to the table where CW2 and CW4 were seated;

G. After leaving THE HUMP restaurant, the USFWS SA along with the NOAA SA took down the license plate numbers of various vehicles that were in parking lot for THE HUMP restaurant which were in the vicinity of the white Mercedes. The NOAA SA ran those license plate numbers with the U.S. Customs and Border Protection service and found that the registered owner of the white Mercedes, which bore license plate number 4USS819 was "Kazuhisa Ohyama;"

H. While USFWS SA had been seated at the sushi bar, the customer seated to the USFWS SA's right side, told the USFWS SA that the sushi chef's name was "Yama." When the USFWS SA tried to confirm the name, the customer said that "Yama" was part of the sushi chef's last name, and that the sushi chef went by the name, "Yama;" and

I. From my conversations with the NOAA SA and my investigation, I am informed that the white Mercedes which is registered in the name of Kazuhisa Ohyama is a 1996 white four door Mercedes vehicle.

**V. CONCLUSION**

18. Based on the foregoing, I have probable cause to believe that THE HUMP has illegally possessed and sold whale meat. Further, there is probable cause to believe that the SUBJECT PREMISES ONE and SUBJECT PREMISES TWO contain evidence of

violations of 16 U.S.C. §§ 1372(a)(4) (illegal purchase and sale of marine mammal product), as further described in Attachment "C."

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ROXANNA BEHTASH  
Special Agent  
National Oceanic and Atmospheric  
Administration

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
2010.

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UNITED STATES MAGISTRATE JUDGE

**ATTACHMENT A**

**PREMISES TO BE SEARCHED**

A. SUBJECT PREMISES ONE (THE HUMP restaurant) to be searched is located at 3221 Donald Douglas Loop South, 3<sup>rd</sup> floor, Santa Monica, California. The premises are further described as located in a white building that is three stories tall. The building is located on the south side of the Santa Monica Airport, next to the Airport Administration Building. There is an exterior staircase with blue railings and the restaurant is on the top floor of the building. There is a glass cylindrical shaped enclosure which contains the elevator for the building which has two blue horizontal stripes. On the upper left side of the building, the word TYPHOON is written in capital letters with a red typhoon weather sign underneath it. The word Hump is written at the top of the building, above the staircase. Santa Monica Airport is written on the right side of the staircase in blue writing. The entrance to THE HUMP is on the third floor, to the right of the staircase.

**ATTACHMENT B**

The second premises (hereinafter the "SUBJECT PREMISES TWO") is described as a white, four-door, 1996 Mercedes vehicle with license plate number "4USS819."

## ATTACHMENT C

### DESCRIPTION OF ITEMS TO BE SEIZED

The following is a list of items to be seized as evidence of the illegal possession and sale of marine mammals, in violation of 16 U.S.C. § 1372(a)(4), located at the SUBJECT PREMISES ONE at 3221 Donald Douglas Loop South, 3<sup>rd</sup> floor, Santa Monica, California and at SUBJECT PREMISES TWO (a white 1996 Mercedes vehicle with license number 4USS819).

a. Marine mammals or marine mammal parts or marine mammal products.

b. Any labels indicating marine mammal parts or marine mammal products.

c. Any containers bearing any marine mammal parts or marine mammal products.

d. Records and documents, purchase orders, sales orders, invoices, receipts, notes, manifests, memoranda, checks, wire transfers, correspondence, ledgers, tally sheets, and/or pictures, relating to the import, export, purchase, possession, transport, delivery and/or sale of marine mammals, marine mammal parts, and/or marine mammal products.