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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HARRY DAVID WILLIAMS, et al.,
Plaintiffs,
v.
COUNTY OF SANTA BARBARA,
et al.
Defendants.

CASE NO. CV00-11122 AHM (JWJx)
consolidated with CV01-590 AHM (JWJx)
**ORDER RE MOTION OF MEYER
ET AL. FOR SUMMARY
JUDGMENT OR SUMMARY
ADJUDICATION AGAINST DALE
AND LIA SCHADE.**

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I.

INTRODUCTION

1
2 Harry David Williams, Janelle Hopps, Robert Dale Schade and Lia Marie
3 Schade¹ brought this action under 42 U.S.C. § 1983 for violation of their Fourth
4 Amendment rights. Their suit arises from, but is not limited to, a series of search
5 warrants that were executed beginning on January 20, 2000 for at least 16
6 locations. 12/20/02 Means *et al.* MSJ (Means Decl.) ¶ 7; Fourth Amended
7 Complaint (“FAC”) ¶ 29. The warrants were the culmination of a wide-ranging
8 investigation that began some 46 months previously, in March 1996. The
9 warrants were based on an affidavit Detective Means of the Santa Barbara
10 Sheriff’s Department (“SBSD”) had prepared and were approved by Judge
11 William McLafferty of the Santa Barbara Superior Court. The Defendants are
12 Santa Barbara County (“SBC”); the SBSD; James Thomas (the Sheriff of SBC at
13 the time of the acts alleged); James Auchincloss (an SBC Deputy District
14 Attorney); Detective Means and various officers and other employees of the
15 SBSD. The Fourth Amended Complaint also names as defendants an informant
16 named Araceli Andalon, Andalon’s “handler” Gail Hermreck (an SBC probation
17 officer) and Brenton Chinn of the California Department of Justice’s Bureau of
18 Narcotics.

19 Plaintiff Dale Schade was a SBSD Lieutenant until he retired in March
20 1999. Mot. Exh. D (Means Affidavit in Support of Warrant (“Affidavit”)) at 7.
21 Schade was in charge of the Santa Ynez Substation between 1994 and May 1998.
22 Mot. Exh. X at 19:4-9 (D. Schade Depo.); Reply Exh. LLL at 163:15-164:2 (D.
23 Schade Depo.). Thereafter, he was assigned to the SBC jail until his retirement.
24 Mot. Exh. X at 19:10-14. Plaintiff Lia Schade married Dale Schade sometime in
25 1997. Opp. Exh. F at 172-73, 186.2. She is the Chief Financial Officer of the

26
27 ¹ Plaintiffs also include numerous business entities, most of which are owned
28 or controlled by Plaintiffs, and which are organized and existing under the laws of
foreign countries. Fourth Amended Complaint (“FAC”) ¶ 5.

1 SBSD. Opp. (L. Schade Decl.) ¶ 1. She held that position at the time that Means
2 was drafting the Affidavit. *Id.*; Aff't at 7.

3 Plaintiffs Dale and Lia Schade challenge the facial validity of the specific
4 warrant applicable to them (there was one such warrant, as well as another
5 warrant for their credit union account), arguing that the Affidavit did not provide
6 probable cause to believe that evidence of criminal activity would be located in
7 their possession, at their residence, in their vehicles, or at Lia Schade's office.
8 The Schades also allege a claim based on *Franks v. Delaware*, 438 U.S. 154
9 (1978), Dale Schade alleges an unlawful detention claim and Lia Schade alleges
10 an unlawful search claim.

11 Fourteen Defendants – Meyer, Birchim, Means, Palera, Olmstead, Gracey,
12 Dollar, Cintron, Swopes, Standley, Burr ridge, Hermreck, Auchincloss and Julie
13 McCammon (“SBC Defendants”) – have moved for Summary Judgment against
14 Plaintiffs Dale and Lia Schade.² All SBC Defendants except Hermreck and
15 Auchincloss are SBSD employees.

16 On March 21, 2003, the Court issued a 44 page ruling on a summary
17 judgment motion filed by Defendant Means and a few others against the claims of
18 Plaintiff Harry David Williams. In essence, the Court ruled that Means and
19 certain other defendants employed by the Santa Barbara Sheriff's Department, as
20 well as Defendants Hermreck and Auchincloss, were not entitled to qualified
21 immunity regarding most of the items seized from Williams's house, which
22 Williams had alleged were obtained in violation of his Fourth and Fourteenth
23 Amendment rights. The Court found, however, that Means was entitled to
24

25 ² Defendants Stanley Mathiasen and Daniel McCammon also brought this
26 motion. However, the parties stipulated to dismiss Mr. Mathiasen and Mr.
27 McCammon on February 18, 2003. 2/18/03 Index of Plaintiffs' Claims at 4.
28 Additionally, Defendants Burr ridge and Standley are sued only by Plaintiff Lia
Schade. FAC ¶ 8.

1 qualified immunity on Williams’s *Franks v. Delaware* claim.

2 In this Court’s March 21, 2003 ruling, the Court also adopted a ruling
3 previously made by Judge Harry L. Hupp in this case, to the effect that the
4 Affidavit on its face showed probable cause that Harry David Williams had
5 engaged in criminal money laundering, justifying the issuance of a search
6 warrant as to him.³ Judge Hupp’s ruling was explicitly confined to the claims
7 asserted by Williams. Indeed, at a Scheduling Conference held before this Court
8 on July 31, 2002, this Court explicitly noted that “Judge Hupp’s Order does not
9 extend to the Schade plaintiffs, and . . . the Schades are still entitled to establish
10 the absence of probable cause.” For the reasons set forth below, the Schades have
11 done so, and for the most part the Moving Parties’ motion is therefore DENIED,
12 with the exception that Defendants Meyer and Birchim’s motion on Dale
13 Schade’s wrongful detention claim is GRANTED and certain individual
14 defendants are entitled to Summary Adjudication on the Schades’ conspiracy
15 claims.

16 **II.**

17 **FACTS**

18 Many of the facts relevant to this motion were set out in the Court’s March
19 21, 2003 Order. The Court will not repeat all those facts here, but incorporates
20 them by reference. Excerpts of the Affidavit relevant to the Court’s analysis of
21 the Schade warrant are included in Appendix A to this Order.

22 Defendant Means submitted the same Affidavit to support separate search
23 warrants he sought for a total of 16 locations, 12/20/02 Means *et al.* MSJ (Means
24

25 ³ Although Judge Hupp found that the showing as to Williams was sufficient,
26 much of the Affidavit was based on circumstantial evidence provided by Andalon,
27 a housekeeper for Williams who the SBSB previously had deemed to be a reliable
28 informant. As it turned out, Williams himself never was indicted or prosecuted.
Neither were the Schades.

1 Decl.) ¶ 7. The warrants were linked to a total of 7 suspects, including Williams
2 and the Schades. *Id.* ¶¶ 3, 9. The last section in each Affidavit described the
3 particular location and/or person to be searched, except that only one Affidavit
4 was submitted for the Schades and the properties associated with them.

5 Means obtained a warrant authorizing searches of the Schades' home in
6 Lompoc, California, their persons and their four vehicles. The property that he
7 sought authorization to search and seize included "all documents relating to [the
8 Schades'] personal/business financial activities." Specifically included in that
9 category were virtually every conceivable kind of document ranging from
10 signature cards, minutes, statements, checks, deposit forms, 1099 forms, loan
11 applications, correspondence, agreements, credit reports, mortgages, certificates
12 of deposit, IRA documents, wire transfers, safe deposit boxes and the like. In
13 addition, Means sought (and obtained) permission to search and seize a vast array
14 of "entity formation" (*i.e.* business) records; computer-tapes and discs;
15 employment records; personal correspondence; CD-ROMs; "video
16 cameras/camcorders/VCRs and other image capturing/reproducing devices;"
17 personal telephone books; address books; telephone bills; cancelled mail
18 envelopes and keys; and "any/all U.S. currency." These are just some of the
19 categories of property described in the seven page, single-spaced, warrant.

20 **A. Affidavit's Allegations About Dale Schade.**

21 According to Means, Dale Schade "[had] developed a business and
22 personal relationship" with Williams. *Aff't* at 14. He had "open access" to
23 Williams's residence and had visited that residence even when Williams was
24 away. *Id.* Based on Andalon's purported observations, Means represented that
25 during Schade's tenure as Commander of the Santa Ynez Substation, "Dale
26 Schade would come to the Williams residence or Williams would contact Dale
27 Schade . . . on a daily basis." *Id.* Means also represented that a Sheriff's Deputy
28 named Julie McCammon had reported that Williams would "periodically" visit

1 Dale Schade at the Santa Ynez Substation. *Id.* at 21.

2 According to the Affidavit, during his employment by SBSB, Dale Schade
3 picked up or delivered packages for Williams “once or twice a month, although it
4 was not constant but occasional.” *Id.* at 14. Andalon stated that “on several
5 occasions” Schade assisted Williams in loading “suspicious” packages at
6 Williams’s residence. *Id.* at 15. She “described the suspicious packages as duffel
7 bags . . . as well as large size manila envelopes.” On one occasion, Andalon
8 observed Dale Schade loading a heavy ice chest onto his vehicle at Williams’s
9 residence. According to Andalon, Dale Schade would not allow her to touch the
10 chest. *Id.* On another occasion, Williams gave Blair Paul a duffel bag and then
11 contacted Schade. The Affidavit states that Schade “was overheard” – by
12 Andalon, presumably, although that is not clear – telling Williams “everything
13 was ready and it was safe for Paul to leave.” *Id.* at 16. “At the end of March or
14 the beginning of April 1998,” Dale Schade collected a “special package” from
15 Williams’s residence and took it to Arizona where he allegedly met Williams. *Id.*
16 at 15. Dale Schade traveled to Arizona via Williams’s private plane. *Id.* Means
17 later discovered a guest card and bill from The Phoenician resort in Phoenix in
18 the Schades’ trash in which the guest name was listed as “M/M Clyde Cessna”
19 and the room was billed to a credit card issued to “H. David Williams/Williams
20 Aviation Company.” The bill reported an arrival date of March 29, 1998 and a
21 departure date of April 1, 1998. *Id.*

22 The Affidavit also recounts an incident in July 1996 in which Williams
23 called Daniel and Julie McCammon (SBSB officers), told them he had fled the
24 scene of a car accident that day, and said he wanted Daniel McCammon to talk to
25 the investigating officer to tell the officer that Williams is “a good guy.” *Id.* at
26 19-20. Daniel McCammon refused to do so. *Id.* at 20. The accident
27 investigation later revealed that Williams had been driving in excess of 115 miles
28 per hour and had been under the influence of alcohol. *Id.* Williams pled *nolo*

1 *contendere* to “significantly reduced charges” and managed to “avoid[]
2 imprisonment.” *Id.* at 20-21. When Julie McCammon asked Schade about the
3 accident, Schade stated that he had “taken care of Williams.” *Id.* at 21. In the
4 Affidavit Means stated that he believed that Schade influenced the prosecution of
5 the accident based in part on (a) Julie McCammon’s representation to him that
6 Schade and the Deputy District Attorney responsible for prosecuting the case
7 were “close personal friends,” *id.* at 21, on (b) the Deputy District Attorney’s
8 reputation for strict prosecution of alcohol-related incidents, *id.* at 22, and on (c)
9 the fact that one month after the accident Schade managed to pay off a \$10,000
10 mortgage loan he had taken out some five months previously. *Id.* at 22-23.

11 Finally, the Affidavit noted that Williams had paid for a “recent” (no date
12 was specified) trip to Europe for the Schades, *id.* at 7, 14, and had given them
13 “cash gifts,” *id.*, and credit cards. *Id.* at 7, 32. It noted that “Dale and Lia Schade
14 openly bragged about Williams paying for a ‘honeymoon’ trip to Europe for the
15 both of them.” *Id.* at 14.

16 **B. Affidavit’s Allegations About Lia Schade.**

17 The Affidavit contains few references to Lia Schade. It asserts that she
18 “has a close personal relationship with Williams and has received cash gifts and
19 favors from Williams,” *Aff’t* at 7, that Williams had paid for a trip to Europe for
20 both Lia and Dale, *id.* at 7, 14, and that she had received credit cards from
21 Williams. *Id.* at 7, 32. It also asserts that she and Dale had “open access” to the
22 Williams property and alleges vaguely that she and Dale had “developed a
23 business and personal relationship” with Williams. *Id.* at 14. The Affidavit
24 contains no allegations of specific interactions between Lia Schade and Williams,
25 no allegations that she ever met with Williams or was at Williams’s residence
26 without Dale being present, no allegations of her involvement with any of the
27 supposedly “suspicious” packages, and no allegations of apparent courier activity
28 on her part.

1 **C. Detention of Dale Schade**

2 On the morning of January 20, 2000 – the same day that the search warrant
3 for the Williams residence was executed, 3/21/03 Order at 5:27; Mot. (Meyer
4 Decl.) ¶ 5 – Defendants Birchim and Meyer executed a search warrant at Dale and
5 Lia Schade’s home. Opp. (D. Schade Decl.) ¶ 6. Meyer and Birchim found Dale
6 Schade outside his residence near the garage. Schade indicated that he was about
7 to take his cat to a veterinary appointment. Mot. (Meyer Decl.) ¶ 13. Schade
8 declares that Birchim and Meyer were accompanied by “nine or ten other
9 officers.” *Id.* Schade also maintains that when Meyer and Birchim arrived, they
10 “blocked [Schade’s] car in the driveway,” Opp. (Schade Decl.) ¶ 6, and would not
11 allow him to leave for the veterinarian. Opp. (Schade Decl.) ¶ 7.⁴ Meyer and
12 Birchim declare that Meyer asked Schade whether he “could wait on the
13 veterinary appointment” and that Schade did not respond. Mot. (Meyer Decl.) ¶
14 13. They also declare that Schade was told during the execution of the warrant
15 that he was free to leave the residence. *Id.* ¶ 15; Mot. (Birchim Decl.) ¶ 13. It is
16 undisputed that the search of the residence lasted approximately three hours, *id.* ¶
17 17; Mot. (Meyer Decl.) ¶ 18, and that Schade was permitted to attend to his
18 laundry while the search was underway. However, officers apparently followed
19 and monitored him while he did so. Opp. (Schade Decl.) ¶ 8; Mot (Meyer Decl.)
20 ¶17.

21 During the search, Meyer and Birchim interviewed Schade for
22

23 ⁴ Defendants assert that Schade’s declaration contradicts his previous
24 deposition testimony. According to Defendants, Schade testified as follows: “I said,
25 well, I got an appointment with the vet. And they said, well, I think this is more
26 important, so let’s go in here and talk. They didn’t tell me I couldn’t leave, but they
27 certainly didn’t say, yeah, you can go if you want. They didn’t say that.” Opp. at
28 20:4-8 (citing Reply Exh. LLL at 15:7-12 (D. Schade Depo.)). Defendants’ citation
to the record is incorrect. After reading all of the excerpts of Schade’s deposition that
Defendants proffered in their moving and reply papers, the Court was unable to locate
the alleged testimony.

1 approximately two and a half hours. That interview was recorded. Opp. (Schade
2 Decl.) ¶ 8. Schade characterizes the interview as an “interrogation” in which the
3 officers “confined” him to his dining room for “most of that time.” *Id.* Birchim
4 and Meyer contend that Schade consented to the interview. Mot. (Birchim Decl.)
5 ¶ 12; Mot. (Meyer Decl.) ¶ 14. Meyer declares that when he told Schade that he
6 wanted to talk to Schade about his relationship with Williams, Schade replied: “I
7 will give you everything I’ve got.” Reply (Meyer Decl.) ¶ 2. Meyer and Birchim
8 also maintain that during the interview Schade was told that he could “walk out
9 the door at any time,” Mot. (Birchim Decl.) ¶ 11, receive phone calls and walk
10 around the residence (provided he was escorted by SBSB personnel). *Id.* ¶ 13;
11 Mot. (Meyer Decl.) ¶ 15. They also contend that Schade helped himself to water
12 in the kitchen on several occasions, that he made coffee which he served to
13 Birchim and Meyer, *id.* ¶ 17; Mot. (Birchim Decl.) ¶ 16, and that he periodically
14 took breaks to use the restroom, answer telephones or walk around. *Id.* ¶ 19; Mot.
15 (Meyer Decl.) ¶ 20.

16 **D. Searches of Lia Schade**

17 On January 20, 2000, Defendants Burrridge and Standley interviewed Lia
18 Schade at her office at the SBSB, searched her office, car and purse, and made
19 copies of her day planner. Burrridge and Standley contend that although they had
20 the search warrant with them at the time, they did not serve it on her, because she
21 consented to the searches. Mot. (Burrridge Decl.) ¶ 8; Mot. Exh. AA at 21:23-22:6
22 (Standley Depo.). In his deposition, Standley stated that he never told Lia Schade
23 that a warrant had been executed at the Schade residence, nor that he and Burrridge
24 possessed a warrant to search Lia Schade’s office, purse and car. *Id.* at 21:23-
25 22:6. However, Lia Schade maintains that Burrridge and Standley told her during
26 the interview that “the SBSB had a warrant to search [her] office, purse, day
27 planner, etc., and therefore [she] did not protest their search, as [she] believed it
28 was futile to do so.” Opp. (L. Schade Decl.) ¶ 4. Lia Schade also maintains that

1 the officers told her that they had executed search warrants at her home. Reply
2 Exh. GGG at 70:11-14 (L. Schade Depo.). She testified that she agreed to allow
3 the officers to conduct their searches, because “it was insinuated that I did not
4 have a choice,” Mot. Exh. Y at 85:21-22 (L. Schade Depo.), and because a sign
5 posted at the entrance to the SBSB campus indicated that all items brought there
6 were subject to search. Reply Exh. GGG at 69:9-14 (L. Schade Depo.).

7

8

III.

9

SUMMARY JUDGMENT STANDARD

10 Federal Rule of Civil Procedure 56(c) provides for summary judgment
11 when “the pleadings, depositions, answers to interrogatories, and admissions on
12 file, together with the affidavits, if any, show that there is no genuine issue as to
13 any material fact and that the moving party is entitled to judgment as a matter of
14 law.” The moving party bears the initial burden of demonstrating the absence of a
15 “genuine issue of material fact for trial.” *Anderson v. Liberty Lobby, Inc.*, 477
16 U.S. 242, 256 (1986). A fact is material if it could affect the outcome of the suit
17 under the governing substantive law. *Id.* at 248. The burden then shifts to the
18 nonmoving party to establish, beyond the pleadings, that there is a genuine issue
19 for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

20 When the non-moving party bears the burden of proving the claim or
21 defense, the moving party can meet its burden by pointing out the absence of
22 evidence from the non-moving party. The moving party need not disprove the
23 other party's case. *See id.* at 325. Thus, “[s]ummary judgment for a defendant is
24 appropriate when the plaintiff ‘fails to make a showing sufficient to establish the
25 existence of an element essential to [his] case, and on which [he] will bear the
26 burden of proof at trial.’” *Cleveland v. Policy Management Sys. Corp.*, 526 U.S.
27 795, 805-06 (1999) (*citing Celotex*, 477 U.S. at 322).

28 When the moving party meets its burden, the “adverse party may not rest

1 upon the mere allegations or denials of the adverse party's pleadings, but the
2 adverse party's response, by affidavits or as otherwise provided in this rule, must
3 set forth specific facts showing that there is a genuine issue for trial.” Fed. R.
4 Civ.P. 56(e). Summary judgment will be entered against the non-moving party if
5 that party does not present such specific facts. *Id.* Only admissible evidence may
6 be considered in deciding a motion for summary judgment. *Id.*; *Beyene v.*
7 *Coleman Sec. Serv., Inc.*, 854 F.2d 1179, 1181 (9th Cir.1988).

8 “[I]n ruling on a motion for summary judgment, the nonmoving party’s
9 evidence ‘is to be believed, and all justifiable inferences are to be drawn in [that
10 party’s] favor.’” *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999) (quoting *Anderson*,
11 477 U.S. at 255). But the non-moving party must come forward with more than
12 “the mere existence of a scintilla of evidence.” *Anderson*, 477 U.S. at 252. Thus,
13 “[w]here the record taken as a whole could not lead a rational trier of fact to find
14 for the nonmoving party, there is no genuine issue for trial.” *Matsushita Elec.*
15 *Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation
16 omitted).

17 IV. 18 ANALYSIS

19 In their motion, Defendants argue that: (1) the warrants were facially valid
20 as applied to both Dale and Lia Schade; (2) the Schades cannot prevail against the
21 Defendants on their *Franks v. Delaware* claim; (3) Defendants Birchim and Meyer
22 did not unlawfully detain Dale Schade during the search of his home; (4) the
23 searches of Lia Schade’s office, car, purse and day planner did not violate the
24 Fourth Amendment; and (5) the Schades cannot show that SBSB officials
25 conspired to violate their Fourth Amendment rights.⁵

26
27 ⁵The SBC Defendants also challenged Lia Schade’s unlawful detention claim,
28 Dale Schade’s First Amendment claim, the Schades’ property damage claim, the
Schades’ retention of property claim and the Schades’ claim regarding Andalon’s
activities. The Schades have since acknowledged that they are no longer asserting

1 In general, the Schades’ arguments as to why the Means Affidavit failed to
2 present probable cause for the issuance of the warrant can be summarized as
3 follows:

- 4 • The Affidavit relied too heavily (or almost entirely) on Andalon and
5 she was patently unreliable.
- 6 • The Affidavit lacked evidence of probable criminal activity on the
7 part of the Schades.
 - 8 (a) The Schades’ activity was non-criminal on its face.
 - 9 (b) The Schades’ activity was remote in time.
- 10 • Even if there was probable cause to search or seize some items, the
11 scope of the warrant was impermissibly broad.

12 Next, the Schades argue that the Affidavit purposefully and misleadingly
13 omitted information known to Means which, had it been disclosed, would have
14 demonstrated to the Superior Court judge that there was no probable cause.

15 The Court rejects the Schades’ first argument, because nothing on the face
16 of the Affidavit suggested that Andalon was not reliable and because Andalon had
17 proved a reliable informant in previous investigations. See 3/21/03 Order at 4:17-
18 19.

19 **A. The Warrants Were Not Supported By Probable Cause**

20 **1. On the Face of the Affidavit, There Was No Probable Cause For**
21 **The Issuance Of The Warrant As To Dale Schade**

22 Applying the “totality of circumstances analysis” reaffirmed in *Illinois v.*
23 *Gates*, 462 U.S. 213, 238 (1983), the test is whether “there is a fair probability that
24 contraband or evidence of a crime [would] be found in [the] particular place[s]” to
25 which the warrant applied. *Id.* In reviewing the affidavit, the Court’s duty “is

26
27
28 these claims against the SBC Defendants. See SGI ¶¶ 83, 91, 96, 101, 104.
Accordingly, Summary Adjudication in favor of Defendants on these claims is
GRANTED.

1 simply to ensure that the magistrate [here, Judge McLafferty] had a ‘substantial
2 basis for concluding’ that probable cause existed.” *Id.* at 238-239. As stated in
3 *Greenstreet v. County of San Bernardino*, 41 F.3d 1306 (9th Cir. 1994), “[t]he facts
4 presented must be sufficient to justify a conclusion that the property which is the
5 object of the search is probably on the premises to be searched at the time the
6 warrant is issued.” *Id.* at 1309 (citation deleted). Thus, probable cause could be
7 established even if the Schades had not themselves engaged in criminal activity.
8 *See Zurcher v. The Stanford Daily*, 436 U.S. 547, 559 (1970) (“[I]t is untenable to
9 conclude that property may not be searched unless its occupant is reasonably
10 suspected of crime and is subject to arrest; [the issue is whether] it is satisfactorily
11 demonstrated to the magistrate that fruits, instrumentalities, or evidence of crime
12 is located on the premises.”)

13 The facts about Dale Schade set forth in the Affidavit fail to establish
14 probable cause, even if – indeed, especially if – the magistrate were to make a
15 “practical, common-sense decision.” *Gates*, 462 U.S. at 238. Despite almost four
16 years of investigation, there was no evidence set forth in the Affidavit of any of
17 the following:

- 18 • That Williams had ever visited the Schades’ residence. (Oddly, there
19 is evidence that Andalon did; she apparently cleaned it, twice. Opp.
20 Exh. F. at 174 (Birchim Interview with Andalon). Yet Andalon
21 reported nothing even remotely suspicious about the Schades’
22 residence.)
- 23 • That any of Williams’s financial records were kept by the Schades or
24 at the locations to be searched.
- 25 • That contraband had been seen, much less found, in any of the
26 Schades’ vehicles.
- 27 • That contraband had been seen, much less found, in the Schades’
28 residence or at their work stations or offices.

- 1 • That contraband had been seen, much less found, on the Schades’
2 persons.
- 3 • That the Schades (or either of them) had made oral or written
4 admissions of engaging either in criminal money laundering or
5 narcotics dealing.
- 6 • That the Schades, or either of them, had destroyed or secreted any
7 evidence of contraband, narcotics, or money laundering.
- 8 • That the Schades, or either of them, had achieved a great, sudden or
9 inexplicable increase in their net worth or their tangible wealth.
10 (There was no “source and application” analysis of even the
11 incomplete kind performed as to Williams.)
- 12 • That Dale Schade had actually spoken to Deputy District Attorney
13 Bullard about Williams’s 1996 speeding violation and accident.⁶
- 14 • That Dale Schade paid off the \$10,000 mortgage loan from his credit
15 union with proceeds or monies derived from (a) Williams or (b)
16 money laundering or (c) narcotics activity.
- 17 • That either of the Schades ever maintained financial accounts in
18 institutions located in Switzerland or the Caribbean.

19 There simply is no evidence in the Affidavit establishing that evidence of
20 criminality probably would be found on the Schades or their property, even if the
21 few banal and benign instances of specific conduct attributed to Dale Schade had
22 not been so remote in time. (See Section IV.B, *infra*.) Moreover, the Affidavit
23 actually contains information that is more consistent with the Schades’ innocence
24 than with the conclusion that there probably would be evidence of criminality in
25 the premises and things to be searched. The Affidavit discloses that instead of
26 being covert and surreptitious, the Schades’ friendship with Williams was openly
27

28 ⁶ Means and Finley did not even bother to interview Bullard until after the warrants had been executed. Reply Exh. FFFF at 386.

1 disclosed. Andalon herself had reported that Williams would contact Dale Schade
2 “by telephone or in person, on a daily basis during Schade’s tenure as the
3 Commander of the Santa Ynez Valley Sheriff’s Substation.” Aff’t at 14. Julie
4 McCammon corroborated that Williams stopped by the Substation. *Id.* at 21. The
5 friendship between Williams and the Schades was extremely well known within
6 the SBSB. Under-Sheriff Dorsey knew about it. Opp. Exh. V at 22:14-23:10. So
7 did Lt. Rogers. *Id.* Exh. KK at 25:19-28:16. Dale Schade obtained SBSB
8 approval to conduct appraisal work for Williams. *Id.*, D. Schade Decl. ¶ 5. When
9 Williams held a party for the Schades at his house, “most of the [SBSB] had been
10 invited.” *Id.* Exh. X at 48:17-21.

11 Any Detective or Magistrate exercising common sense should have found it
12 peculiar that Dale Schade, a veteran and ranking officer of a law enforcement
13 agency (SBSB) in a relatively small community, and his wife Lia Schade, a
14 civilian-employee of the SBSB, would engage in criminal activity with someone
15 (Williams) whose recent presence in the community was conspicuous and whose
16 friendship with them was so well-publicized.

17 **2. On The Face of the Affidavit, There Was No Probable Cause For**
18 **The Issuance Of The Warrant As to Lia Schade.**

19 No reasonable officer could have concluded that the Affidavit set forth
20 sufficient information to implicate Lia Schade. In the Affidavit, she was not even
21 mentioned as a co-conspirator (p. 50) or a Penal Code violator (p. 54.) Given the
22 absence of evidence of Lia Schade’s involvement with Williams’s suspicious
23 activities, no reasonable officer could have concluded that there was probable
24 cause to believe that she would have “records” of her husband’s allegedly illegal
25 activities “on [her] person at any given time,” *id.* at 56, nor that there was probable
26 cause to conclude that such evidence would be located in her office, purse, vehicle
27 or personal day planner. The most charitable reading of the Affidavit establishes,
28 at most, that Lia was an ancillary participant in some facets of her husband’s

1 friendship with Williams. That she was Dale’s spouse could not, and without
2 more did not, suffice to establish probable cause that she was involved in either
3 Dale’s or in Williams’s allegedly criminal activities.

4 **3. The Warrants Were Overbroad.**

5 A warrant cannot authorize a search broader in scope than the probable
6 cause upon which that warrant is based permits. *United States v. Weber*, 923 F.2d
7 1338, 1346 (9th Cir. 1991).

8 Here, there was no probable cause in the first place. Moreover, as is set
9 forth in Section II above, the warrants were excessively broad – almost shockingly
10 so. They read as if the drafter had borrowed from, and then mechanically
11 modified, the kind of fishing expedition a first year law firm associate comes up
12 with in drafting a request for production of documents. It reflects the approach of
13 someone who constantly was asking himself, “Is there anything that I forgot? Can
14 there possibly be something else I can add?” What could possibly justify seizing
15 video cameras, VCRs, computer manuals, and utility company receipts?⁷

16 **4. Means And Those Officers Who Executed The Warrants After**
17 **Reading The Affidavit Are Not Entitled To Qualified Immunity.**

18 Qualified immunity shields public officials from liability “insofar as their
19 conduct does not violate clearly established statutory or constitutional rights of
20 which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S.
21 800, 818, 102 S.Ct. 2727 (1982). In ruling on a summary judgment motion based
22 on qualified immunity, the court must conduct a two-step inquiry. First, the Court
23 must ask: “Taken in the light most favorable to the party asserting the injury, do
24 the facts alleged show the officer’s conduct violated a constitutional right?”
25 *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Second, “if a violation could be made

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28 ⁷ This is not to say that the warrant was an invalid “general warrant.” *Marks*
v. Clarke, 102 F.3d 1012, 1030-31 (9th Cir. 1997). Rather, the warrant did not
provide probable cause to search and seize the myriad items listed therein.

1 out on a favorable view of the parties' submissions, the next, sequential step is to
2 ask whether the right was clearly established" when viewed in the context of the
3 case. *Id.*

4 For a right to be "clearly established," "the contours of the right must be
5 sufficiently clear that a reasonable official would understand that what he is doing
6 violates that right." *Saucier*, 533 U.S. at 202 (citation deleted). "If officers of
7 reasonable competence could disagree on the issue [whether a chosen course of
8 action is constitutional], immunity should be recognized." *Brewster v. Board of*
9 *Education of the Lynwood Unified School District*, 149 F. 3d 971, 977 (9th Cir.
10 1998) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Put more simply,
11 "[i]f the law did not put the officer on notice that his conduct would be clearly
12 unlawful, summary judgment based on qualified immunity is appropriate."
13 *Saucier*, 533 U.S. at 202.

14 The Fourth Amendment to the Constitution was adopted in 1789 and made
15 applicable to the States no later than in *Mapp v. Ohio*, 367 U.S. 643 (1961).
16 *Illinois v. Gates, supra* was decided in 1983. *Greenstreet, supra*, was decided in
17 1994. The constitutional principles requiring probable cause and prohibiting
18 overbroad warrants were clearly established at the time that Means procured the
19 warrants and other officers executed them.

20 The affidavit that Detective Means submitted to Judge William McLafferty
21 failed to establish probable cause as to the Schades. Neither Means nor any
22 officer who claims to have acted in reliance on the affidavit is entitled to qualified
23 immunity. In reaching that conclusion, the Court is applying the standards
24 articulated in *Malley v. Briggs*, 475 U.S. 335 (1986). That case

25 present[ed] the question of the degree of immunity accorded a
26 defendant police officer in a damages action under 42 U.S.C. § 1983
27 when it is alleged that the officer caused the plaintiffs to be
28 unconstitutionally arrested by presenting a judge with a complaint
and a supporting affidavit which failed to establish probable cause.

Id. at 337. Speaking for the seven member majority (the two remaining justices

1 concurred in part), Justice White held that

2 “the same standard of objective reasonableness that we applied in the
3 context of a suppression hearing in [*United States v. Leon* . . .
4 defines the qualified immunity accorded an officer whose request for
5 warrant allegedly caused an unconstitutional arrest. Only where the
6 warrant application is so lacking in indicia of probable cause as to
7 render official belief in its existence unreasonable . . . will the shield
8 of immunity be lost.”

6 *Id.* at 344-345. Justice White went on to state that:

7 The . . . question . . . is whether a reasonably well-trained officer in
8 [Means’s] position would have known that his affidavit failed to
9 establish probable cause and that he should not have applied for the
10 warrant. If such was the case, the officer’s application for a warrant
11 was not objectively reasonable, because it created the unnecessary
12 danger of an unlawful arrest. It is true that in an ideal system an
13 unreasonable request for a warrant would be harmless, because no
14 judge would approve it. But ours is not an ideal system, and it is
15 possible that a magistrate, working under docket pressures, will fail
16 to perform as a magistrate should. We find it reasonable to require
17 the officer applying for the warrant to minimize this danger by
18 exercising reasonable professional judgment.

13 *Id.* at 345-46. *See also Marks v. Clarke*, 102 F.3d 1012,1028 (9th Cir. 1997) (that
14 a warrant was reviewed by a prosecutor and signed by a magistrate does not,
15 standing alone, provide a basis for an officer to establish reasonable reliance on
16 the warrant).

17 Here, the Schades were the victims of unlawful searches. No reasonably
18 well-trained officer would have believed that the Affidavit supported probable
19 cause as to the Schades. Thus, Means violated the Schades’ clearly established
20 constitutional rights when he evidently succumbed to the evil of attributing guilt
21 merely by virtue of the Schades’ facially innocent association with Williams.
22 Moreover, any other officer who read and relied on the Affidavit to search the
23 Schades is also not entitled to qualified immunity.⁸

25 ⁸ As the Court discusses in Section IV.C.2., *infra*, Birchim and Meyer are
26 entitled to qualified immunity, because they reasonably relied on the warrant, not the
27 Affidavit, when they detained Dale Schade. As for Lia Schade’s unlawful search
28 claim, the Court noted in Section II.D. *supra*, that Defendants Burridge and Standley
never served the warrant on Lia Schade; they maintain that Lia Schade consented to
the searches of her office, day planner, purse and vehicle. Thus, whether Burridge

1 **B. Dale Schade’s *Franks v. Delaware* Claim.⁹**

2 In principle, this claim is moot because the Court has found no probable
3 cause. Nevertheless the Court will address it in the event that the Ninth Circuit
4 disagrees with this Court about the probable cause issue.

5 Dale Schade contends that Means displayed a deliberate disregard for the
6 truth in the Affidavit and that but for Means’s dishonesty, the Affidavit would not
7 have supported a finding of probable cause.

8 The Court discussed in its previous order the qualified immunity standards
9 for alleged misrepresentations or omissions in search warrant affidavits in Section
10 1983 cases. See 3/21/03 Order at 26-27. To survive summary judgment, a
11 plaintiff must “1) make a ‘substantial showing’ of deliberate falsehood, [material
12 omission,] or reckless disregard for the truth and 2) establish that, but for the
13 dishonesty, the challenged action would not have occurred.” *Liston v. County of*
14 *Riverside*, 120 F.3d 965, 973 (9th Cir. 1997) (quoting *Hervey v. Estes*, 65 F.3d
15 784, 788-89 (9th Cir. 1995)). To meet his burden, Dale Schade’s attack on the
16 Affidavit

17 must be more than conclusory and must be supported by more than a
18 mere desire to cross-examine. There must be allegations of
19 deliberate falsehood or of reckless disregard for the truth, and those
20 allegations must be accompanied by an offer of proof. They should
21 point out specifically the portion of the warrant affidavit that is
22 claimed to be false; and they should be accompanied by a statement
23 of supporting reasons. Affidavits or sworn or otherwise reliable
24 statements of witnesses should be furnished, or their absence
25 satisfactorily explained. Allegations of negligence or innocent
26 mistake are insufficient.

27 *Franks v. Delaware*, 438 U.S. 154, 171 (1978).

28 _____
and Standley are liable for those searches turns on the validity of Lia Schade’s
consent, and not whether they were entitled to rely on the Affidavit or warrant. See
Section IV.D., *infra*.

⁹ To the extent that Lia Schade is also asserting a *Franks* claim, see Index of
Plaintiffs’ Claims No. 1, all SBC Defendants are entitled to Summary Adjudication.
Lia Schade has not shown that Means misrepresented or omitted from the Affidavit
significant information he had learned about her.

1 Dale Schade's central argument is that the Affidavit misleadingly conceals
2 details which, if properly revealed, would have shown that most of the allegations
3 regarding Dale Schade were based on evidence acquired in mid-1998 or earlier –
4 about 18 months before the warrants were served in January 2000. Schade
5 contends that had the magistrate known about the 'staleness' of the evidence, the
6 magistrate would not have concluded that the Affidavit established probable
7 cause to suspect that evidence of wrongdoing would be found at Dale Schade's
8 residence, in his possession or in his vehicles in January 2000. The Court agrees
9 with Schade that Means's presentation of the evidence in the Affidavit was
10 intentionally misleading and that had the Affidavit been cured of its deficiencies,
11 the warrant would not have supported a finding of probable cause.

12 Schade argues that references to him in the Affidavit tend to give the
13 misleading impression that Means had recent evidence of suspicious activities
14 linked to Schade. For example, Means declared that Andalon had reported that
15 Schade "would come to the Williams residence or Williams would contact Dale
16 Schade, by telephone or in person, on a daily basis during Schade's tenure as a
17 Commander of the Santa Ynez Valley Sheriff's Substation." Means also stated
18 that Sergeant Julie McCammon had reported that Williams would "periodically"
19 stop by the Santa Ynez Substation to visit Dale Schade. Aff't at 21. The
20 Affidavit did not mention that Schade had ceased working at the Santa Ynez
21 station in May 1998 – 19 months before the Affidavit was submitted to Judge
22 McLafferty. Reply Exh. LLL at 163:15-164:2 (D. Schade Depo.). The Affidavit
23 cited Andalon as having reported that "Dale and Lia Schade had open access to
24 the Williams property and have visited . . . while Williams [was] at home and
25 away." *Id.* at 14. The Affidavit omitted that Andalon had reported the Schades'
26 "open access" in March 1998, Opp. Exh. F at 172 (Birchim interview with
27 Andalon), and that Means had concluded that as of May 1998 "Schade's trips to
28 [Williams's] house [were] fairly infrequent." Opp. Exh. F at 280 (Briefing

1 Prepared by Means and Gracey on March 3, 1999); Reply Exh. LLL at 163:15-
2 164:2 (D. Schade Depo.). Schade also argues that the Affidavit misleadingly
3 characterized as “recent” a trip that he, Lia Schade and Williams took to Europe
4 for which Williams paid. *Id.* at 7. Means knew that the trip occurred in July
5 1998. Opp. Exh. F at 193 (Hermreck interview with Andalon).

6 Means’s characterization of Andalon’s “suspicious packages” reports was
7 also misleading. Means discussed two specific instances in which Andalon
8 reported that she had seen Schade in contact with such packages. First, Means
9 represented that Andalon had seen Dale Schade collect a “special package” from
10 Williams’s residence at some time “at the end of March or the beginning of April
11 1998” which he delivered to Williams in Arizona. *Aff’t* at 15. Means later
12 discovered a guest card and bill from The Phoenician resort in Phoenix, AZ,
13 listing an arrival date of late March 29, 1998 and a departure date of April 1,
14 1998, in the Schades’ trash. The guest name was “M/M Clyde Cessna” and the
15 room was billed to Williams’s credit card. *Id.* Since he appeared to have stayed
16 in Phoenix under an assumed name after he collected the “special package,” this
17 presumably rendered Schade’s apparent courier activities even more suspicious.
18 However, Detective Birchim’s interview notes show that Andalon had
19 represented that Dale Schade picked up the “suspicious package” sometime in
20 1997. Opp. Exh. F at 173 (3/25/98 Birchim interview with Andalon) (recounting
21 that Schade picked up the “special package” from Williams’s residence “last
22 year.”). Thus, not only was the “special package” evidence up to three years old,
23 there was no evidence that Schade had used a fictitious name in 1997 in the
24 course of transporting the package to Arizona.

25 The other specific instance of apparent courier activity that Andalon
26 reported was undated. Means declared that “[o]n one occasion” Andalon had
27 observed Dale Schade at Williams’s house loading a heavy ice chest into his
28 vehicle and that Schade would not allow Andalon to touch the chest. *Aff’t* at 15.

1 Means omitted that Andalon had reported this incident on June 18, 1998 to
2 Detective Cintron and that the incident had occurred on May 31, 1998 – over 19
3 months before Means submitted the Affidavit to Judge McLafferty. Opp. Exh. F
4 at 186.2 (Cintron interview with Andalon). Means also omitted that Williams
5 had hosted an anniversary party for the Schades on May 30, 1998 and that the ice
6 chest (characterized as a “cooler” in Cintron’s notes) had been delivered to
7 Williams’s property on the day before the party, *id.*, thus concealing a probable
8 innocent explanation for the presence of the mysterious “ice chest.”

9 Means also attributed to Andalon several non-specific observations
10 regarding Schade’s involvement with suspicious packages and courier activity.
11 He represented that “Schade has delivered and escorted . . . suspicious packages
12 for Williams many times. On several occasions Schade has met Williams at the
13 residence and assisted him in loading suspicious packages.” Aff’t at 15.
14 According to Means, “while [Schade was] employed with the Sheriff’s
15 Department,” Andalon observed Schade picking up or delivering packages for
16 Williams “once or twice a month.” *Id.* at 14. The Affidavit states that Schade
17 retired from the SBSB in March 1999, thus intimating that Schade was involved
18 with the suspicious packages until that time. Again, the Affidavit omitted that
19 Means had characterized Schade’s trips to the house as “fairly infrequent” after
20 May 1998. Opp. Exh. F at 280 (Briefing Prepared by Means and Gracey on
21 March 3, 1999); Reply Exh. LLL at 163:15-164:2 (D. Schade Depo.). The
22 Affidavit also omitted that as of July 1998, Hermreck (Andalon’s “handler”) was
23 meeting with Andalon regularly and filing reports every few days regarding
24 Andalon’s observations, see Opp. Exh. F at 186.1-218, and that by October 1998,
25 Hermreck was filing such reports nearly every day until the warrants were
26 executed in January 2000. *Id.* at 220-272, 289-305, 323, 329, 335-339, 344-345,
27 369-373, 380-387, 390-92, 412-13, 428, 432-34, 443-56, 464-76, 483-86, 495-98,
28 505, 520-21, 543-49. In those reports, Hermreck recorded in detail Andalon’s

1 observations about the mundane comings-and-goings of suspects – and the
2 movement of packages – to and from the Williams residence. None of those
3 reports after July 28 mentions Dale Schade being involved with any packages,
4 suspicious or otherwise. In fact, the Schades appear only three times in
5 Andalon’s near-quotidian reports between July 1998 and January 2000.¹⁰ Means
6 knew that Hermreck’s reports of Andalon’s observations during and after July
7 1998 did not contain any references to courier-type activity on Schade’s part, but
8 left that out of the Affidavit.

9 Had the Affidavit included the evidence, certainly available to Means, that
10 anchored in time nearly all references to Dale Schade, the magistrate would have
11 been aware that nearly all of the specific evidence about him was at least a year
12 old. Evidence of Schade’s visits to Williams’s residence after May 1998 was
13 sparse. The specific evidence relating to “suspicious packages” referred to
14 incidents that had occurred in 1997 and May 1998. The allegation regarding
15 Williams’s traffic accident, including that Schade paid off a \$10,000 loan one
16 month after the accident, was based on events that occurred in 1996. Aff’t at 19-
17 23. The conversation in which Schade supposedly told Williams over the
18 telephone that it was “safe for [Blair] Paul to leave” occurred in March 1998.
19 Aff’t at 16. The non-specific and conclusory view attributed to Andalon that “she
20 believes Schade has supported Williams’s suspicious activities by using Schade’s
21 Law Enforcement influence in the Santa Ynez Valley,” was not enough for
22 probable cause in January 2000, given that Schade ceased working at the Santa

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26 ¹⁰ First, Andalon reported the July 1998 trip of Williams and the Schades to
27 Europe. Opp. Exh. F at 193. Second, Andalon reported that on April 19, 1999,
28 Williams had told her that while Williams was away on a trip, “Dale will be coming
to check on the house and possibly spending the night.” *Id.* at 369. Finally, Andalon
reported that on July 30, 1999 she had overheard Williams call Dale Schade and ask
him when he would be ready to travel to Arizona. *Id.* at 449.

1 Ynez Valley substation in May 1998.¹¹

2 “A search warrant is not stale where there is sufficient basis to believe,
3 based on a continuing pattern or other good reasons, that the items to be seized
4 are still on the premises.” *United States v. Bowman*, 215 F.3d 951, 964 (9th Cir.
5 2000). Staleness must be evaluated “in light of the particular facts of the case and
6 the nature of the criminal activity and property sought,” *United States v. Pitts*, 6
7 F.3d 1366, 1369 (9th Cir. 1993); a mere lapse of substantial amounts of time is
8 not determinative. *Id.* In particular, “when a police investigation relates to a
9 continuing criminal business . . . courts will permit greater lapses of time between
10 the dates of the activities described in the affidavit and the date of the warrant
11 request.” *United States v. Fisher*, 137 F.3d 1158, 1164 (9th Cir. 1998). This is
12 especially the case where older information is coupled with recently obtained
13 information. *E.g. United States v. Vaandering*, 50 F.3d 696, 700 (9th Cir. 1995);
14 *United States v. Foster*, 711 F.2d 871, 878 (9th Cir. 1983) (evidence of drug
15 transactions that occurred fifteen months before search warrant issued not stale
16 where evidence also linked defendant to drug sale that happened twelve months
17 later). The reason courts accept a more substantial lapse of time in these

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19
20 ¹¹ In their Reply, Defendants proffer evidence from a conversation between
21 Williams and Julie McCammon that the SBSB surreptitiously recorded. In that
22 conversation, which occurred on October 13, 1999, Williams merely stated that he
23 had seen Dale Schade recently, that they had traveled together to Phoenix in August
24 1999 and that Schade and Williams had “talk[ed] about different business ideas that
25 [Williams] told [Schade] he could run.” Reply Exh. ZZZ at 353-55 (Investigative
26 Report Prepared by Means); Reply (J. McCammon Decl.) ¶¶ 6-7. Although Means
27 referred to that recorded conversation in the Affidavit, he did not recount any mention
28 of Schade by Williams. Aff’t at 22. To defeat summary judgment on a *Franks* claim,
Plaintiff must make a substantial showing of deliberate or reckless disregard for the
truth in the affidavit and that but for the dishonesty, the affidavit would not support
a finding of probable cause. *Franks*, 438 U.S. at 171-72. Even if this new
information were sufficient for probable cause, which it is not, it is not appropriate
for defendants to overcome the *Franks* claim by proffering additional evidence in
their favor that they chose not to include in the affidavit in the first place.

1 situations “is that criminal entrepreneurs, much like their legitimate counterparts,
2 likely will retain the equipment and capital of their enterprise for a long period of
3 time. Thus, evidence of a criminal business operating at a particular location in
4 the not-so-distant past may reasonably give rise to a belief that a search of the
5 location would yield further evidence.” *Fisher*, 137 F.3d at 1164.

6 The Court previously held that the Affidavit established probable cause to
7 conclude that *Williams* was running a narcotics and money laundering operation
8 “at a particular location” – his home. Thus, under *Fisher* the evidence regarding
9 so-called “suspicious packages” being delivered and picked up from *Williams*’s
10 residence by Schade, even if several months or years old, could be sufficient to
11 justify a search of *Williams*’s residence for equipment, capital and records of his
12 criminal business. However, such evidence would not necessarily support a
13 finding of probable cause to search another location – Schade’s residence – when
14 there was never any evidence presented that Schade’s home was ever a part of
15 *Williams*’s business. The evidence that Schade was involved with “suspicious
16 packages” at *Williams*’s residence over a year before the warrant was executed
17 could not have provided probable cause to believe that evidence of *Williams*’s
18 criminal business would be found at *Schade*’s home, in his vehicles or in his
19 possession in January 2000.

20 For these reasons, the Court holds that Dale Schade has made a substantial
21 showing that Means deliberately omitted information that, if included, would
22 have resulted in a finding of no probable cause to search his residence, his
23 vehicles or Schade himself. Accordingly, Means’s Motion for Summary
24 Adjudication of Dale Schade’s *Franks v. Delaware* claim is DENIED.

25 On the facts presented here, only Defendant Means, who drafted the
26 Affidavit, may be liable under Dale Schade’s *Franks* claim. The other SBC
27 defendants could be liable under a *Franks* claim if they were shown to have made
28 “a deliberate or reckless misstatement” that was incorporated in the Affidavit and

1 which, had the information not been included, would have resulted in a finding of
2 no probable cause. See *Hart v. O'Brien*, 127 F.3d 424, 448 (5th Cir. 1997),
3 abrogated on other grounds, *Spivey v. Robertson*, 197 F.3d 772 (5th Cir. 1999)
4 (“[A] deliberate or reckless misstatement or omission by a governmental official
5 who is not the affiant may . . . form the basis of a *Franks* claim.”); *United States*
6 *v. DeLeon*, 979 F.2d 761, 763-74 (9th Cir. 1992) (same). Plaintiffs have not
7 proffered any evidence that Defendants Birchim, Palera, Olmstead, Hermreck,
8 Gracey, Dollar, Cintron, Swopes or Auchincloss, who performed various roles in
9 the investigations, deliberately mis-reported what they discovered to Means.
10 Accordingly, those SBC Defendants are entitled to Summary Adjudication on the
11 *Franks v. Delaware* claim.

12 Sergeant Julie McCammon, whose accounts of her contacts with Williams
13 and Dale Schade appear in the Affidavit, also is entitled to Summary
14 Adjudication. In reference to Williams’s 1996 traffic accident for which
15 Williams was facing charges, she told Means that when she had asked Dale
16 Schade if he knew about the accident, Schade responded that he had “taken care
17 of Williams.” Aff’t at 21. McCammon also told Means that she believed that
18 Schade and Edward Bullard – the Deputy District Attorney responsible for the
19 case – “are close personal friends.” *Id.* Plaintiffs have proffered a declaration by
20 Mr. Bullard in which he declared that at the time he prosecuted Williams in 1996,
21 he and Schade were not friends. Opp. (Bullard Decl.) ¶ 2. Plaintiffs appear to
22 argue that Julie McCammon is therefore liable for falsely representing to Means
23 that Bullard and Schade were friends.

24 However, while Bullard’s declaration may raise a genuine issue about
25 whether Schade and Bullard were actually friendly in 1996, it does not create an
26 issue about what McCammon *knew* and whether she *intentionally or recklessly*
27 misrepresented what she knew when she spoke with Means. *Liston*, 120 F.3d at
28 973. McCammon testified that she had seen Bullard and Schade speaking with

1 each other at the station and that she knew that Dale Schade had attended parties
2 held by Bullard at Bullard’s home. Reply Exh. DDDD at 36:3-18 (J. McCammon
3 Depo.). She testified that it was on the basis of those observations that she
4 believed that Schade and Bullard were friends. *Id.* Plaintiffs have proffered no
5 evidence tending to show that McCammon had reason to believe that Schade and
6 Bullard actually were *not* friends and that she intentionally or recklessly told
7 Means otherwise. Accordingly, McCammon is entitled to Summary Adjudication
8 on Dale Schade’s *Franks* claim.

9 **C. Defendants Birchim and Meyer are Entitled to Qualified Immunity on**
10 **Dale Schade’s Unlawful Detention Claims.**

11 Defendants Meyer and Birchim move for Summary Judgment on Dale
12 Schade’s claim that he was unreasonably detained during the search of his
13 residence.¹² They argue first that Schade was never detained; he was free to leave
14 at any time. Alternatively, they argue that even if Schade was detained during the
15 search, the detention was constitutional.

16 **1. Was Schade Detained?**

17 Construing the facts in Dale Schade’s favor, the Court finds that there is a
18 genuine issue about whether Defendants Birchim and Meyer detained him. “For
19 purposes of the Fourth Amendment, a seizure occurs when a law enforcement
20 officer, by means of physical force or show of authority, in some way restrains
21 the liberty of a citizen.” *United States v. Chan-Jimenez*, 125 F.3d 1324, 1326
22 (9th Cir. 1997) (citing *Florida v. Bostick*, 501 U.S. 429, 434 (1991)). Birchim
23 and Meyer maintain that no seizure occurred, because they claim that Schade was
24 told that he was free to leave the residence during the execution of the warrant.
25 Mot. (Meyer Decl.) ¶ 15; Mot. (Birchim Decl.) ¶ 13. However, Schade maintains
26 that when Meyer and Birchim arrived, they “blocked [Schade’s] car in the
27

28 ¹² Schade is not asserting this claim against any of the other Defendants in this
action. Index of Plaintiffs’ Claims No. 4.

1 driveway,” Opp. (D. Schade Decl.) ¶ 6, and would not allow him to leave to take
2 his cat to the veterinarian. He also declares that during the two and a half hour
3 interview Meyer and Birchim conducted during the search of his residence, he
4 was “confined” to his dining room “most of the time.” *Id.* ¶ 8. Thus, construing
5 the facts in a light most favorable to Plaintiff Dale Schade, the Court concludes
6 that there remains a genuine issue about whether Dale Schade was detained
7 during the search. *Michigan v. Summers*, 452 U.S. 692, 696 (1981) (holding that
8 a seizure occurred where respondent was not free to leave the premises during
9 search).

10 **2. Assuming Schade Was Detained, Was His Detention**
11 **Nevertheless Lawful?**

12 Defendants Meyer and Birchim argue that even if Dale Schade was
13 detained, they are nevertheless entitled to Summary Adjudication, because the
14 detention was reasonable under *Michigan v. Summers*. In *Summers*, the Supreme
15 Court held that “for Fourth Amendment purposes . . . a warrant to search for
16 contraband founded on probable cause implicitly carries with it the limited
17 authority to detain the occupants of the premises while a proper search is
18 conducted.” *Summers*, 452 U.S. at 705 (footnotes omitted). Such a detention
19 serves important government interests, such as “prevent[ing] flight in the event
20 incriminating evidence [is] found, . . . minimiz[ing] the risk of harm to the
21 officers, and . . . further[ing] the orderly completion of the search.” *Ganwich v.*
22 *Knapp*, 319 F.3d 1115, 1122 (9th Cir. 2003).

23 However, “[t]he scope of a detention must be carefully tailored to its
24 underlying justification.” *Id.* (quoting *Florida v. Royer*, 460 U.S. 491, 500
25 (1983)). Although a mere detention (without more) would be tailored to the
26 interests suggested above and would “work no great invasion of privacy” *id.* at
27 1120, an involuntary interview during the search renders the detention more
28 intrusive than necessary, *id.* at 1122, because the law enforcement interests in

1 controlling the premises during the search are not furthered by “condition[ing] the
2 [detainee’s] release on [his] submission to interrogation.” *Id.* at 1120-21. In
3 *Ganwich*, the Ninth Circuit held that a detention during a search violated the
4 detainees’ Fourth Amendment rights when the officers held them in a waiting
5 room, prevented them from going to the restroom unattended, prevented them
6 from retrieving their personal possessions, prevented them from using or
7 answering the telephone and told them that they would not be released until they
8 submitted to individual interviews with police in a back room. *Id.* at 1118.

9 Here, Schade remained on his property during the entire search, which
10 lasted approximately three hours. Mot. (Birchim Decl.) ¶ 17; Mot. (Meyer Decl.)
11 ¶ 18. While the search was underway, he was interviewed by Birchim and Meyer
12 in his dining room for approximately two and a half hours. Opp. (Schade Decl.) ¶
13 8. Schade does not dispute Birchim and Meyer’s claim that he consented to the
14 interview. Mot. (Birchim Decl.) ¶ 12; Mot. (Meyer Decl.) ¶ 14. According to a
15 transcript of the tape-recorded interview, Schade stated “I will give you
16 everything I’ve got,” in response to Meyer’s statement that he and Birchim
17 wanted to ask him about his relationship with Williams. Reply (Meyer Decl.) ¶ 2.
18 Schade also does not dispute that during that interview he was told he could make
19 and receive phone calls. Mot. (Birchim Decl.) ¶ 13. Nor does he dispute that on
20 several occasions he helped himself to water from the kitchen, made coffee which
21 he served to Birchim and Meyer and was permitted to complete doing a laundry.
22 Mot. (Birchim Decl.) ¶ 16; Mot. (Meyer Decl.) ¶ 17. Additionally, and unlike in
23 *Ganwich*, Schade makes no claim that Birchim and Meyer told him that he would
24 not be released until he submitted to an interview. On these facts, Defendants
25 Birchim and Meyer did not exceed the bounds of reasonableness imposed by
26 *Summers* and *Ganwich*. Therefore, if *Summers* and its progeny apply to this case,
27 Birchim and Meyer would be entitled to Summary Adjudication on Dale Schade’s
28 unlawful detention claim.

1 However, the matter is more complicated, because the Court has held that
2 the warrant Birchim and Meyer relied on was invalid. In *Summers*, that the police
3 had obtained a *valid* warrant was central to the Court’s holding. The Court noted
4 that whether the police obtained a valid warrant is “[o]f prime importance in
5 assessing the intrusion” that a detention engenders. *Summers*, 452 U.S. at 701.
6 This is so, because “the physical entry of the home is the chief evil against which
7 the wording of the Fourth Amendment is directed.” *Id.* at 701 n. 13 (quoting
8 *United States v. United States District Court*, 407 U.S. 297, 313 (1972)). Where
9 “a neutral magistrate rather than an officer in the field” has found probable cause
10 to authorize such an invasion, *id.* at 703, the “less intrusive,” *id.* at 701, detention
11 of a resident during the search, “although admittedly a significant restraint on his
12 liberty,” *id.*, is “constitutionally reasonable.” *Id.* at 705. Here, the warrant that
13 Birchim and Meyer were relying on when they detained Dale Schade was not
14 valid, so it would appear that *Summers* does not apply. See *Marks v. Clarke*, 102
15 F.3d 1012, 1032 (9th Cir. 1997) (*Summers* does not authorize detaining persons
16 in furtherance of an illegal search).

17 However, qualified immunity entitles Birchim and Meyer to rely on the
18 warrant if their reliance was “objectively reasonable.” See *United States v. Leon*,
19 468 U.S. 897, 922 (1984).¹³ In *Ramirez v. Butte-Silver Bow County*, 298 F.3d
20 1022 (9th Cir.), *cert. granted*, 123 S.Ct. 1354 (March 3, 2003), the court stated
21 that officers who lead a team that executes a search warrant must read the warrant
22 and “satisfy themselves that they understand its scope and limitations, and that it
23 is not defective in some obvious way.” *Id.* at 1027 (citing *Leon*, 468 U.S. at 922-
24

25 ¹³ Although *Leon* was a decision about the exclusionary rule, *Leon*, 468 U.S.
26 at 922 (“[T]he marginal or nonexistent benefits produced by suppressing evidence
27 obtained in objectively reasonable reliance on a subsequently invalidated search
28 warrant cannot justify the substantial costs of exclusion.”), the Ninth Circuit has
applied it in the context of qualified immunity. *Ramirez v. Butte-Silver Bow County*,
298 F.3d 1022, 1027 (9th Cir. 2002), *cert. granted*, 123 S.Ct. 1354 (March 3, 2003)
(citing *Leon*).

1 23 (1984)). Officers who participate in the search but who are not in charge need
2 not read the warrant; they need only inquire about “the nature, scope and details
3 of the warrant.” *Marks*, 102 F.3d at 1030 (9th Cir. 1997). The Court is aware of
4 no case requiring that an officer who executes a facially valid warrant have read
5 the affidavit. Indeed, in the *Marks* opinion, there were no facts presented to
6 suggest that several of the officers who conducted the search received anything
7 more than an oral briefing about what they were to be looking for. *Id.* at 1019-20.
8 Yet the Ninth Circuit held that the district court had erred in holding that
9 qualified immunity required additional inquiries by those officers. *Id.* at 1029-30.

10 It is undisputed that neither Defendant was involved in any of the actual
11 searching that occurred at the Schades’ residence, Mot. (Birchim Decl.) ¶ 21;
12 Mot. (Meyer Decl.) ¶ 22, and Plaintiffs do not allege that Birchim or Meyer were
13 in charge of the expedition. Even if they were in charge, the undisputed evidence
14 demonstrates that they satisfied their *Marks* and *Ramirez* duties. Both Birchim
15 and Meyer declare that they were “informed of the nature and scope of the
16 warrants” and that they read the warrants before the search. Mot. (Birchim Decl.)
17 ¶¶ 5, 8; Mot. (Meyer Decl.) ¶¶ 7, 10. Each declares that he was “satisfied that
18 [he] understood [the warrant’s] scope and limitations” when the search took
19 place. *Id.* ¶ 10; Mot. (Birchim Decl.) ¶ 8. Because there was nothing obviously
20 defective about the warrant¹⁴ (as opposed to the Affidavit¹⁵), under *Summers*
21 Birchim and Meyer were entitled to believe that the search warrant authorized
22 them to detain Dale Schade incident to the search.

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25 ¹⁴ Although the warrant was overbroad because it listed items to be searched
26 or seized that were not supported by probable cause, see Section IV.A.3 *supra*, a
27 reasonable officer who was not familiar with the Affidavit would not have learned
28 this by reviewing the warrant alone.

28 ¹⁵ The Schades do not contend either that Birchim or Meyer had read the
Affidavit or that their actions reveal an awareness of the Affidavit’s contents.

1 **D. Defendants Burrige and Standley are Not Entitled to Summary**
2 **Judgment Regarding their Searches of Lia Schade’s Office, Car, Purse**
3 **and Day Planner.**

4 “[A] citizen has no right to resist a search or seizure pursuant to a warrant.”
5 *Gasho v. United States*, 39 F.3d 1420, 1432 n. 12 (9th Cir. 1994). And, for the
6 reasons discussed in Section IV.C.2, *supra*, when SBSB officers Burrige and
7 Standley searched Lia Schade’s office, purse, day planner and vehicle, they were
8 entitled to believe that the warrant they possessed was valid. However, to rely on
9 a warrant as authority to search, the Fourth Amendment requires an officer to
10 serve the warrant on the suspect so that the suspect has notice of what the officer
11 is entitled to seize. *United States v. Gantt*, 194 F.3d 987, 995 (9th Cir. 1999)
12 (citing *United States v. McGrew*, 122 F.3d 847, 850 (9th Cir.1997)). Burrige
13 and Standley did not serve the warrant on Lia Schade. Therefore, they cannot
14 rely on the warrant to justify their actions.

15 The officers argue that their search of Lia Schade nevertheless comported
16 with the Fourth Amendment, because they contend that Lia Schade consented to
17 it. Where an officer does not rely on a warrant, the search may nevertheless be
18 lawful if the subject consented to the search. *Schneckloth v. Bustamonte*, 412
19 U.S. 218, 219 (1973). When an officer “seeks to rely upon consent to justify the
20 lawfulness of a search, he has the burden of proving that the consent was, in fact,
21 freely and voluntarily given.” *United States v. Koshnevis*, 979 F.2d 691, 694 (9th
22 Cir. 1992) (quoting *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968)). The
23 Court finds that there is a genuine issue about whether Lia Schade freely
24 consented to the search.

25 In *Bumper*, the Supreme Court held that where a homeowner consented to a
26 search of her house only after the officer represented that he had a warrant, the
27 homeowner’s consent was invalid. *Bumper*, 391 U.S. at 548. The Court
28 explained: “When a law enforcement officer claims authority to search a home

1 under a warrant, he announces in effect that the occupant has no right to resist the
2 search. The situation is instinct with coercion—albeit colorably lawful coercion.
3 Where there is coercion, there cannot be consent.” *Id.* at 550. “It is well
4 established that there can be no effective consent to a search or seizure if that
5 consent follows a law enforcement officer’s assertion of an independent right to
6 engage in such conduct.” *Orhorhaghe v. INS*, 38 F.3d 488, 500 (9th Cir. 1994).
7 In *Orhorhaghe*, the Ninth Circuit found that “*Bumper* . . . stands for the
8 proposition that a consent is ineffective if it follows ‘an express or implied claim
9 by the police that they can immediately proceed to make the search in any
10 event.’” *Orhorhaghe*, 38 F.3d at 501 (citation deleted).

11 When assessing qualified immunity, the Court must assume the facts in Lia
12 Schade’s favor and then determine whether it would be clear to a reasonable
13 officer that his conduct was unlawful. *Estate of Ford v. Ramirez-Palmer*, 301
14 F.3d 1043, 1045 (9th Cir. 2002). Here, Lia Schade has declared that Burrige
15 and Standley informed her that they had a warrant to search her “office, purse day
16 planner, etc.,” Opp. (L. Schade Decl.) ¶ 4, and testified that those officers told
17 her that search warrants were executed at her home. Reply Exh. GGG at 69:9-10,
18 70:11-14 (L. Schade Depo.). She also testified that she consented to the searches,
19 because “[b]efore [Burrige and Standley] started the [taped portion of the
20 interview], they talked about the general order 77-1, or whatever the number is.
21 And there is a big sign posted as you drive into the [SBSD] campus. It says
22 anything subject to search upon request. I felt I had no choice.” *Id.* at 69:10-14.
23 Therefore, construing the evidence in a light most favorable to Lia Schade, Lia
24 Schade cooperated with the officers after they (a) told her that search warrants
25 had been executed at her home; (b) told her that they had a warrant to search her
26 office, purse, car and day planner; and (c) reminded her of an SBSD rule, posted
27 on a sign at the entrance to the campus, warning all visitors that they and their
28 property are subject to search. Given that it was clearly established at the time

1 that a consent is invalid if it was given after the officer told the subject that he
2 had authority to search regardless of whether the subject consented, *Burridge and*
3 *Standley* are not entitled to qualified immunity, because there is a genuine factual
4 issue about whether their statements to Lia Schade indicated that they did not
5 require her consent.¹⁶

6 **E. The Schades' Conspiracy Claims.**

7 The Schades allege that Defendants Birchim, Means, Palera, Olmstead,
8 Hermreck, Gracey, Dollar, Cintron, Swopes, Julie McCammon and Auchincloss
9 conspired with Means to obtain a warrant lacking probable cause. Index of
10 Plaintiffs' Claims ¶ 3. Dale Schade alleges that those same defendants conspired
11 with Means to obtain a warrant via misrepresentations in the Affidavit. *Id.* ¶ 1.
12 "To establish . . . liability for a conspiracy, [Plaintiffs] must demonstrate the
13 existence of an agreement or 'meeting of the minds' to violate constitutional
14 rights." *Mendocino Environmental Ctr. v. Mendocino County*, 192 F.3d 1283,
15 1301 (9th Cir. 1999) (quoting *United Steelworkers of America v. Phelps Dodge*
16 *Corp.*, 865 F.2d 1539, 1540-41 (9th Cir. 1989) (en banc)). The defendants must
17 have, "by some concerted action, intend[ed] to accomplish some unlawful
18 objective for the purpose of harming another which results in damage." *Gilbrook*
19 *v. City of Westminster*, 177 F.3d 839, 856 (9th Cir.1999). Each alleged
20 participant in the conspiracy "need not know the exact details of the plan, but . . .
21 must at least share the common objective of the conspiracy." *Mendocino*, 192

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23 ¹⁶ Defendants' counsel blithely assert, in conclusory fashion, that Lia Schade's
24 testimony about her belief concerning the sign on the SBSB campus "confirms she
25 had no expectation of privacy." Reply at 25 n. 12. This is an inadequate rejoinder
26 to the cases plaintiffs cite in arguing that government employees can have a
27 reasonable expectation of privacy in their workplace against intrusions by police and
28 that Lia Schade's office was not "so open to fellow employees or the public that no
expectation of privacy [was] reasonable." *O'Connor v. Ortega*, 480 U.S. 709, 717-18
(1987) (plurality op.). *Accord United States v. Jones*, 286 F.3d 1143, 1150 (9th Cir.
2002) ("[A] public employee has a reasonable expectation of privacy in her
workplace office.").

1 F.3d at 1302. Plaintiffs need not provide direct evidence of the agreement
2 between the conspirators; what is required is circumstantial evidence sufficient
3 for a jury to “infer from the circumstances (that the alleged conspirators) . . .
4 reached an understanding to achieve the conspiracy's objectives.” *Hampton v.*
5 *Hanrahan*, 600 F.2d 600, 621 (7th Cir.), *rev'd on other grounds*, 446 U.S. 754
6 (1980) (quoting *Adrickes v. Kress & Co.*, 398 U.S. 144, 158-59 (1970)). *See also*
7 *Mendocino*, 192 F.3d at 1301.

8 **1. Conspiracy to Obtain a Warrant Unsupported By Probable**
9 **Cause**

10 The Schades claim that the SBC Defendants conspired to obtain a warrant
11 based on an Affidavit unsupported by probable cause. This claim depends on the
12 notion that any reasonable officer who read the Affidavit would have had reason
13 to know that it did not present probable cause for a warrant directed at the
14 Schades. If a Defendant read the Affidavit and did not raise any concerns, a
15 reasonable jury could infer that the defendant reached an “understanding” with
16 Means to obtain the warrant despite its invalidity.

17 Of the Defendants who brought this motion, Plaintiff’s evidence shows that
18 only Palera and Auchincloss reviewed the Affidavit. Palera testified that Means
19 asked him to review the Affidavit and that he – Palera – provided no comments.
20 Opp. Exh. W at 71:4-24 (Palera Depo.). Auchincloss testified that he was asked
21 to provide input about “form [and] probable cause,” and that he cannot remember
22 whether he had any comments. Opp. Exh. EE at 15:9-11, 16:7-16 (Auchincloss
23 Depo.). Therefore, because a reasonable officer (or district attorney, in
24 Auchincloss’s case) would have realized upon reviewing the Affidavit that there
25 was no probable cause for the issuance of the warrants as to either Dale Schade or
26 Lia Schade, and there is evidence that neither Palera nor Auchincloss raised a
27 concern about it, there remains a genuine issue regarding whether Palera or
28 Auchincloss conspired with Means to procure a facially defective warrant as to

1 Dale Schade and Lia Schade.

2 However, neither of the Schades has proffered sufficient evidence for a
3 reasonable jury to infer that any of the other SBC Defendants conspired with
4 Means in that manner. They have not proffered any evidence that any of the
5 remaining defendants ever saw the Affidavit. Moreover, evidence was assembled
6 from myriad sources and locations during the more than four year investigation.
7 For example, evidence was obtained from background checks, public records,
8 Andalon's observations, 'trash runs' at the residences of all Plaintiffs, trash
9 delivered by Andalon, and surveillance in California and Arizona. Defendants
10 Olmstead, Hermreck, Gracey, Dollar, Cintron and Swopes were assigned to
11 perform discrete tasks and report back on what they had found. The Schades
12 have proffered no evidence that any of these individuals mis-reported what they
13 observed or discovered, nor that any of these individuals knew what evidence had
14 been uncovered in other facets of the investigation. For example, while it is clear
15 that Hermreck had extensive knowledge of Andalon's observations, there is no
16 evidence that she knew anything about what may have been uncovered about the
17 Schades through records searches, trash runs and the like. Thus, there is no
18 evidence on the basis of which a reasonable jury could infer that any of these
19 individuals shared a common objective with Means to obtain a facially invalid
20 warrant. Accordingly, the Court GRANTS summary adjudication to Defendants
21 Olmstead, Hermreck, Gracey, Dollar, Cintron and Swopes on the Schades' claim
22 that they conspired to procure warrants lacking probable cause.

23 Similarly, based on the evidence before the Court, no reasonable jury could
24 infer that Defendants Birchim or McCammon conspired with Means to obtain a
25 warrant based on a facially invalid affidavit. Birchim was the lead investigator
26 on the case between March 1998 and November 1998. Reply SGI ¶ 171; Mot.
27 (Birchim Decl.) ¶ 3. Plaintiffs have not proffered any evidence to challenge his
28 assertion that after November 1998, he was not involved in the investigation until

1 he was asked to interview Dale Schade when the warrants were finally executed.
2 *Id.* There is also no indication that Birchim ever reviewed the Affidavit before if
3 was submitted to the magistrate. Accordingly, there is no basis to infer that
4 Birchim conspired with Means.

5 Nor is there evidence that Julie McCammon, whose accounts of her
6 discussions with Williams and Dale Schade appear in the Affidavit, conspired
7 with Means to procure a warrant lacking probable cause to search Dale or Lia
8 Schade. There is no evidence that Julie McCammon ever told Means anything
9 about Lia Schade or that she had any knowledge about what other information
10 had been uncovered regarding Lia or Dale Schade. The uncontroverted evidence
11 indicates that the only portions of the Affidavit McCammon saw were those
12 portions referring to her own or her husband's observations. Mot. (Means Decl.)
13 ¶ 27.

14 The Court therefore GRANTS Birchim's and McCammon's motion for
15 summary adjudication on this conspiracy claim.

16 **2. Conspiracy to Obtain a Warrant By Including Misleading**
17 **Information in the Affidavit.**

18 The Court has held that Defendant Means is not entitled to qualified
19 immunity on Dale Schade's *Franks v. Delaware* claim. See Section IV.B, *infra*.
20 Other Defendants may be liable if Dale Schade shows they conspired with Means
21 to obtain the warrant using misleading information. To make out at least a
22 circumstantial case that a Defendant conspired with Means in that manner, Dale
23 Schade would have to show that the Defendant knew that Means was proffering
24 evidence from Andalon that was stale and that the Defendant failed to correct the
25 Affidavit or actually aided Means in drafting it.

26 As noted above, only two of the Defendants who brought this motion –
27 Defendants Palera and Auchincloss – reviewed the Affidavit. Palera also
28 gathered information from Andalon. He testified that early in the investigation,

1 his role was to “stay in contact with [Andalon]” and relay information Andalon
2 had provided to Birchim. Opp. Exh. W at 51:13-17 (Palera Depo.). He also
3 testified that he met with Andalon “numerous times” while he was assigned to
4 North County Narcotics, *id.* at 12:19-13:17, and gathered trash Andalon had
5 collected from Williams’s residence. *Id.* at 35:21-36:1. Given that Palera was
6 personally familiar with Andalon’s reporting and thereafter reviewed the
7 Affidavit, there remains a genuine issue about whether a jury may find that he
8 conspired with Means to omit the facts tending to show that the information
9 derived from Andalon was stale. However, although Defendant Auchincloss
10 reviewed the Affidavit, he is entitled to Summary Adjudication, because there is
11 no evidence proffered by the Plaintiffs tending to indicate that Auchincloss knew
12 that the evidence derived from Andalon was stale.

13 The other SBC Defendants are entitled to Summary Adjudication on this
14 conspiracy claim. Defendant Julie McCammon is entitled to Summary
15 Adjudication, because Plaintiffs have proffered no evidence that she intentionally
16 misrepresented information she relayed to Means when she told him that she
17 believed that Schade and Bullard were friends. *See* Section IV.B, *infra*. The
18 remaining SBC Defendants are entitled to Summary Adjudication, because
19 Plaintiffs have not proffered any evidence that they ever saw the Affidavit or
20 intentionally mis-represented anything they uncovered in the course of their
21 individual investigative tasks.

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V.

CONCLUSION

For the foregoing reasons, the SBC Defendants' Motion for Summary Judgment¹⁷ against Dale and Lia Schade is GRANTED in part and DENIED in part. The Court's specific rulings are as follows:

1. On the face of the Affidavit there was no probable cause to search the Schades' residence, their vehicles, Lia Schade's office, purse, personal day planner or the Schades themselves. Accordingly, Defendant Means is not entitled to qualified immunity regarding the facial validity of the warrant.
2. Defendant Means is not entitled to qualified immunity on Dale Schade's *Franks v. Delaware* claim. Defendant Julie McCammon is entitled to qualified immunity on that claim. All other SBC Defendants are entitled to Summary Adjudication on that claim.
3. Defendants Birchim and Meyer are entitled to Qualified Immunity regarding Dale Schade's purported detention during the search of his residence.
4. Defendants Burrige and Standley are not entitled to qualified immunity regarding their searches of Lia Schade's office, car, purse and day planner.
5. As to both Dale Schade and Lia Schade, there is a genuine issue about whether Defendants Palera and Auchincloss conspired with Means to procure a defective warrant lacking probable cause. There is also a genuine issue about whether Palera conspired with Means to omit material evidence from the Affidavit in violation of the *Franks* doctrine. All other SBC Defendants are entitled to Summary Adjudication on the Schades' conspiracy claims.
6. The SBC Defendants are entitled to Summary Adjudication on Lia Schade's unlawful detention claim, Dale Schade's First Amendment claim,

¹⁷ Docket No. 261.

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the Schades' property damage claim, the Schades' retention of property claim and the Schades' claims regarding Andalon's activities, since the Schades have now acknowledged that they are no longer asserting these claims against the SBC Defendants.

IT IS SO ORDERED.

DATE:

A. Howard Matz
United States District Judge