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2 **FOR PUBLICATION**

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4 BY: _____
DEPUTY CLERK OF COURT

5 **IN THE SUPERIOR COURT**
6 **OF THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 **COMMONWEALTH OF THE**
9 **NORTHERN MARIANA ISLANDS,**

10 **Plaintiff,**

11 **vs.**

12 **JACK PETRUS,**
13 **D.O.B. 11/01/1984**

14 **Defendant.**

CRIMINAL CASE NO. 12-0235

**ORDER DENYING MOTION TO
SUPPRESS STATEMENT WITHOUT
PREJUDICE**

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16 **THIS MATTER** came before the Court on August 20, 2013, at 9:00 a.m. in Courtroom 223A,
17 pursuant to Jack Petrus (“Defendant”)’s Motion to Suppress Statement. The Commonwealth was
18 represented by Margo Brown, Assistant Attorney General. Defendant was represented by Douglas
19 Hartig, Chief Public Defender.

20 Although the motion was opposed and briefed by the Commonwealth, the Court found that the
21 motion had no supporting declaration or affidavit as required by this Court pursuant to its previous
22 published decision.¹ The Court expresses its disappointment with both parties in proceeding with this
23 motion notwithstanding a published order of this Court requiring a supporting affidavit or declaration
24 by the movant.

25 Defendant bears the burden of coming forward with at least an offer of proof or some minimal
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28 ¹ See *Commonwealth v. Arriola*, Crim. No. 09-0225 (Super. Ct. June 28, 2010) (Order Granting in Part D. Mot. for Recon. on Mot. To Supp. Statement of Co.D. Joseph Ray Arriola, Jr.).

1 showing that his suppression motion has some factual basis, to justify expending the Court and
2 Commonwealth's time and expense in conducting an evidentiary hearing. Where no factual basis for
3 motion to suppress is even alleged, a Court is well within its discretion to refuse to conduct an
4 evidentiary hearing on the matter. See *United States v. Howell*, 231 F.3d 615 (9th Cir. 2000)
5 (evidentiary hearing on a motion to suppress need be held only when moving papers allege facts with
6 sufficient definiteness, clarity, and specificity to enable trial court to conclude that contested issues of
7 fact exist; mere conclusory statements do not justify evidentiary hearing); *United States v. Harris*, 914
8 F.2d 927, 933 (7th Cir. 1990) (evidentiary hearing on motion to suppress not granted merely because
9 defendant wants one, there must be a showing of facts to justify hearing); *United States v. Irwin*, 612
10 F.2d 1182, 1187 n. 14 (9th Cir. 1980) (where no issue of fact contained in affidavit of defendant would
11 require relief, no evidentiary hearing need be held).

12 The Ninth Circuit requires that the moving papers set forth sufficient facts, but also gives the
13 district court the discretion to compel a declaration to be filed on the defendant's behalf, containing
14 admissible facts and affirmations that the declarant is competent to testify as to the matters stated in the
15 declaration. See *United States v. Wardlow*, 951 F.2d 1115, 1116 n.1 (9th Cir. 1991) (requiring the
16 defendant to either file a declaration himself or file one written by a person with personal knowledge
17 of the contested facts pursuant to Local Rule 9.2). Despite arguments that may be made that this
18 practice might violate a defendant's Fifth Amendment right against self-incrimination, the Court notes
19 first that a defendant's attorney can provide the court with a third-party affidavit of the disputed facts,
20 which does not require the defendant's signature. See *United States v. Batiste*, 868 F.2d 1089, 1092 (9th
21 Cir. 1989). Also, a defendant's testimony in support of a motion to suppress on Fourth Amendment
22 grounds is not admissible against him at trial on the issue of guilt unless he fails to register an objection.
23 See *id.* This Court similarly requires a supporting declaration or affidavit to be filed along with a
24 motion to suppress, as held in its previous decisions.

25 In view of the foregoing, the Court denies Defendant's motion without prejudice.
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SO ORDERED this 28 day of August, 2013



DAVID A. WISEMAN, Associate Judge