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6 Attorneys for Plaintiff

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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA

10
11 THE PEOPLE OF THE STATE) Criminal Case No. 213515
OF CALIFORNIA,)
12)
Plaintiff,) DATE: August 31, 2015
13) TIME: 10:00 a.m.
v.) DEPT: 29
14) TIME EST.: 10 MINUTES
ANTOLIN GARCIA-TORRES,)
15) NOTICE OF MOTION AND
MOTION TO CONTINUE TRIAL
16 Defendant.) PURSUANT TO PENAL CODE
SECTION 1050
17

18 PLEASE TAKE NOTICE THAT on August 31, 2015 at 10:00 a.m. in
19 Department 29, or as soon thereafter as the matter may be heard,
20 the People of the State of California, by and through their
21 counsel, Jeffrey F. Rosen, District Attorney, and David R. Boyd,
22 Deputy District Attorney, will move to continue the above-
23 referenced case pursuant to Penal Code section 1050.

24 This motion is made on the following grounds: given the
25 expansive discovery demands, this prosecutor will need additional
26 time to respond to defendant's requests for items (a)-(n), (r)-
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1 (t), and (v-w).^{1/} Additionally, some of defendant's requests are
2 for non-discoverable items, many of which require briefing as the
3 authorities cited by counsel do not stand for the proposition
4 claimed.

5 The motion is based on the attached memorandum of points and
6 authorities and the attached declaration.

7 The People request a hearing date of no earlier than
8 September 22, 2015. The defense has objected to the People's
9 request for a two week continuance.

10 MEMORANDUM OF POINTS AND AUTHORITIES

11 The People have complied with the procedural elements of
12 Penal Code section 1050(b): this motion is in writing, accompanied
13 by a declaration detailing specific facts showing that a
14 continuance is necessary, and was served on all parties to the
15 proceeding at least two days prior to the proceeding.

16 Penal Code section 1050(e) allows a continuance of any
17 hearing on a showing of good cause. "Whether good cause exists is
18 a question for the trial court's discretion." *People v. Doolin*
19 (2009) 45 Cal.4th 390, 450.

20 Before getting to the merits of the People's requested
21 continuance, it must be noted that as material either comes in
22 existence, or becomes known to the People, and it is within our
23 actual or constructive possession, it will be disclosed
24 irrespective of any obligation to do so. However, defendant's
25 motion contains a fourteen-page list containing nineteen separate
26 paragraphs of material that the defense asks the court to order
27 the prosecution to disclose. The People's position is that much
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^{1/} There are no paragraphs (o), (p), (q), or (u).

1 of the material demanded has already been disclosed^{2/} or is not a
2 required disclosure, but given the expansive scope of defendant's
3 demand to compel discovery, the People request an at least an
4 additional two weeks to research and respond to the various
5 demanded items which do not appear to be required disclosures.

6 For example, in paragraph (d) of his motion, defendant asks
7 this Court to order "the names and addresses of any persons who
8 were present during interviews of any of the witnesses." [Disc.
9 Mot. at 7:20-21^{3/}]. While the People are not withholding such
10 material, Penal Code section 1054.1(a) only covers persons that
11 the prosecutor intends to call as witnesses at trial. Defendant's
12 cited cases do not support his position, change the plain language
13 of Penal Code section 1054.1(a), or expand the prosecution's duty
14 under Penal Code section 1054.1(e).

15 Defendant's reliance on *People v. Wright* (1985) 39 Cal.3d
16 576, 590-91 is inapposite because *Wright* merely stands for the
17 *Brady* duty to disclose police reports that tend to impeach a
18 prosecution trial witness. To further support their demand,
19 defendant also cites to *Joe Z. v. Superior Court* (1970) 3 Cal.3d
20 797, 806, despite the fact that in that case, the Supreme Court
21 held that the petitioner failed to show that the requested
22 discovery was necessary for the preparation of his case. The
23 Court explained that "although defendant need not establish the
24 admissibility of the information sought, he must show more than a

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26 ^{2/} Some of the material demanded by defense counsel in
27 their discovery motion has already been provided previously.
The People need additional time to identify these materials and
confirm with counsel that the documents were in fact received.

28 ^{3/} "Disc. Mot." refers to defendant's motion to compel
discovery filed with this court on August 17, 2015.

1 'mere desire' to inspect it." *Ibid.* Here, Defendant's broad
2 request for contact information of all persons present during the
3 interview of witnesses appears to be supported by "mere desire"
4 rather than any showing that it is mandated by Penal Code section
5 1054.1. Of course, the People will continue to disclose material
6 exculpatory information, should any exist, but are not required to
7 disclose contact information for all persons present during any
8 interview.

9 As another example, in paragraph (e) of his motion, defendant
10 asks to compel discovery of contact information for "all persons
11 who were percipient witnesses to the collection of evidence in the
12 case." [Disc. Mot. at 8:25-26]. Defendant cites *In Re Chol Soo*
13 *Lee* (1980) 103 Cal.App.3d 615, 618-619 for the proposition that
14 "percipient witness may not be withheld because prosecutor
15 believes his statement is inherently improbable." [Disc. Mot. at
16 9:7-8]. In that case, the prosecution failed to disclose the
17 identity of an eyewitness who claimed the defendant was not the
18 shooter because his account was contradicted by the physical
19 evidence. *In re Lee*, 103 Cal.App.3d at p. 618. However, in the
20 instant case, there is no authority to support the much broader
21 assertion that the prosecution must turn over contact information
22 of all persons who were percipient witnesses to the collection of
23 any evidence.

24 Because there are nineteen separate paragraphs, many of which
25 demand multiple categories of information and because the above
26 represents an example of the legally questionable nature of
27 defendant's discovery demands, the People need more time to
28 respond.

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CONCLUSION

For the above reasons, the People request that the hearing date be vacated and a new hearing date be set no earlier than September 22, 2015.

Dated: August 25, 2015

Respectfully submitted,

JEFFREY F. ROSEN
District Attorney


DAVID BOYD
Deputy District Attorney

DECLARATION OF DAVID R. BOYD IN SUPPORT OF
MOTION FOR CONTINUANCE

I, David R. Boyd, do hereby declare that:


1. I am the assigned Deputy District Attorney to the above-referenced case.
2. On or about August 17, 2015, the People received defendant's motion to compel discovery.
3. Defendant's motion contains a fourteen-page list containing nineteen separate paragraphs of material that the defense asks the court to order the prosecution to disclose. Some of those paragraphs demand numerous separate categories of material.
4. The defense cites approximately fifty-eight cases in support of their motion.
5. On August 19, 2015, the People e-mailed defense counsel and requested rescheduling the hearing for September 22, 2015. The e-mail and response are attached as Exhibit 1.
6. The People indicated it would not be able to file a response and cover all the topics that defense counsel requested by the timely filing date for a September 8, 2015 hearing.
7. On August 24, 2015 defense counsel Al Lopez responded that he would object to a continuance, noting that he would only agree to a delay in getting him the discovery demanded in the motion.
8. Defense counsel attaches his informal discovery requests, but in many instances does not attach the People's written responses regarding the issues.
9. The People need more time to respond to counsel's authorities, identify the material demanded, but already

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received, and to inform this Court regarding the background of his demands.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Dated: August 25, 2015



DAVID R. BOYD
Deputy District Attorney

EXHIBIT 1

David Boyd - Re: AGT 213515

From: "Lopez, Alfonso" <[REDACTED]>
To: David Boyd <[REDACTED]>, "Matthews, Brian J" <[REDACTED]>
Date: 8/24/2015 8:20 AM
Subject: Re: AGT 213515

Hi David,

I'm on vacation through the rest of the week but read your email. The proposed ct order that I included allows you time to comply with discovery requirements. I'm requesting a ct order regarding discovery so I would object to a continuance. I'm not opposed to giving you a few more weeks after the mtn is heard to fully comply with discovery.

Al

From: David Boyd <[REDACTED]>
Sent: Wednesday, August 19, 2015 11:28:12 AM
To: Lopez, Alfonso; Matthews, Brian J
Subject: AGT 213515

Counsel,

I have received your motion to compel discovery to be heard September 8, 2015. Please confirm whether you are amenable to a continuance of that motion. My reasons are that I would rather spend the time getting the answers to your discovery concerns than battling the legality of them and that I cannot cover all the topics you have brought up in your motion and have the legal response filed in a timely way. Can you do the motion on September 22nd?

David R. Boyd
Deputy District Attorney
Homicide Unit
Santa Clara County
[REDACTED]
[REDACTED]

NOTICE: This email message and/or its attachments may contain information that is confidential or restricted. It is intended only for the individuals named as recipients in the message. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or content to others and must delete the message from your computer. If you have received this message in error, please notify the sender by return email.

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PROOF OF SERVICE

STATE OF CALIFORNIA) People v. ANTOLIN GARCIA TORRES
) ss.
COUNTY OF SANTA CLARA) Docket No. 213515

I am employed in the County of Santa Clara, State of California. I am over the age of eighteen years, and not a party to the above-entitled action. My business address is: Office of the District Attorney, 70 West Hedding Street, West Wing, San Jose, CA 95110

On August 25, 2015, I served the following documents upon the interested parties in this action by the method(s) indicated below:

**Notice of Motion and Motion to Continue Trial Pursuant to Penal Code Section 1050
Exhibit 1**

BY PERSONAL DELIVERY: by causing a true copy thereof to be hand-carried to the recipient at the address indicated:

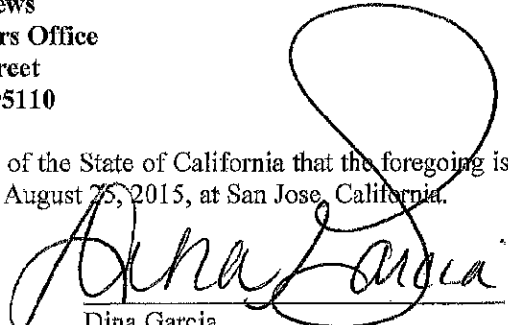
BY FACSIMILE TRANSMISSION: by faxing a true copy thereof to the recipient at the facsimile number indicated:

BY COUNTY PONY MAIL: by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

**Al Lopez
Alternate Defenders Office
701 Miller Street
San Jose, CA 95110**

**Brian Matthews
Alternate Defenders Office
701 Miller Street
San Jose, CA 95110**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 25, 2015, at San Jose, California.


Dina Garcia