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(ENDORSED)  
**FILED**

JAN 3 2017

~~DAVID H. YAMASAKI~~  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY C. COLDENSON DEPUTY

7  
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 )  
OF CALIFORNIA, )

12 )

Plaintiff, )

13 )

v. )

14 )

ANTOLIN GARCIA-TORRES, )

15 )

Defendant. )

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On December 9, 2016, this Court ruled on the defendant's motion to exclude the DNA evidence asserting the right to both a prong one and prong three hearing for the autosomal DNA evidence in this case. At that hearing the Court found that "DNA evidence is neither new to science or the law." [RT Vol. 88, 4960:5.] The Court further declined a further hearing on the prong three request by the defense.

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On December 23, 2016, the defense filed a writ with the Sixth District Court of Appeal seeking various relief from the Court's ruling including an order directing this Court for a prong three hearing. That writ was not received by the District Attorney's Office until December 27, 2016, however, and it was reviewed and forwarded to the California Attorney General's Office that same day.

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1 The People request that the Court calendar the issue to a mutually agreeable date where the  
2 People will make available for questioning Brooke Barloewen for a prong three hearing in order  
3 to establish the contents of her declaration and to make clear that the “correct scientific procedures  
4 were used” in this particular case. *People v. Venegas* (1998) 18 Cal.4th 47, 78.

5 “All that is necessary in the limited third-prong hearing is a *foundational* showing that  
6 correct scientific procedures were used.” *People v. Barney* (1992) 8 Cal.App.4th 798, 825  
7 (emphasis added). The People ask that the Court police counsel the prong three testimony to issues  
8 that are necessary for that limited foundational showing.

9 At the end of that hearing and after the defense has had the opportunity to cross-examine  
10 the People’s witnesses, the People will request this Court to make the factual findings that are  
11 required under *Venegas*: that “the procedures utilized in the case at hand complied with [the  
12 generally accepted]<sup>1/</sup> technique.” Unfortunately, a review of the Court’s ruling of December 9,  
13 2016, did not include such findings. While they could be implied, given that the briefing of both  
14 parties addressed the requirements of prong three as noted in *Venegas*, in an abundance of caution  
15 the People wish to avoid the potential for more significant delays of the trial that would result  
16 should a stay order be issued by the Court of Appeal by addressing proactively, whether merited  
17 or not, the defense’s claims under Evidence Code section 1203, the Sixth Amendment and due  
18 process as they relate to such a hearing.

19 The People request that this hearing, and the Court’s factual findings, occur prior to the jury  
20 being sworn. The Court of Appeal will be notified of this request.

21 DATED: December 30, 2016

22 Respectfully submitted,

23 JEFFREY F. ROSEN  
24 District Attorney

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26 DAVID R. BOYD  
27 Deputy District Attorney

28 <sup>1/</sup> As this Court has already rule upon prong one, the People do not intend to, and are not  
requesting, any testimony on that subject.