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(ENDORSED)
FILED

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David H. Yarbrough, Clerk of the Superior Court
County of Santa Clara, California
By: DIANA GUTIERREZ

6 Attorneys for Defendant

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

12	PEOPLE OF THE STATE OF CALIFORNIA,	NO: 213515
13		
14	Plaintiff,	RESPONSE TO PEOPLE'S OPPOSITION
15	vs.	TO DEFENSE MOTION TO COMPEL
16		PRODUCTION OF DNA (CODIS)
17	ANTOLIN GARCIA-TORRES,	EVIDENCE
18		
19	Defendant	Date: 03/08/16
20		Time: 1:30 P.M.
21		Dept.: 29
22		Time Est.: 30 MINUTES

19 TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO THE
20 DISTRICT ATTORNEY FOR SANTA CLARA COUNTY:

21 NOTICE IS HEREBY GIVEN that on the 8th day of March, 2016, at 1:30 p.m., in Department
22 29 of the above-entitled court, the above-named defendant will move the court for an order requiring
23 the disclosure of scientific materials pertaining to DNA testing including state database profiles such
24 as CODIS.

25 This motion is made on the grounds that the prosecution has introduced DNA evidence to the
26 grand jury and it is reasonably anticipated that they will introduce said scientific evidence at the jury
27 trial in its case in chief. Moreover, the scientific evidence sought through this motion is required by the
28 defense as it is material to the effective preparation of defenses and cross examination of prosecution

1 disclosure aspect of the statute, the statute itself does not create an absolute privilege under Evidence
2 Code § 1040(b)(1).

3 Here, the defendant is requesting release of partially matching profiles without identifying
4 information for use in a judicial proceeding. The run through database and the subsequent analysis of
5 the matching and partially matching profiles are part and parcel of the “analyses” done in this case and
6 must be provided.

7
8 **D. IF THE INFORMATION IS PRIVILEGED, THE COURT MUST ENGAGE IN A**
9 **BALANCING TEST UNDER EVIDENCE CODE § 1040(b)(2)**

10 The statute requires that the Court “weigh the interests[,] and sustain the privilege only if “there is
11 a necessity for preserving the confidentiality of the information that outweighs the necessity for
12 disclosure in the interest of justice.””” *Marylander v. Superior Court*, (2000) 81 Cal. App. 4th 1119,
13 1126.

14
15 In *Davis v. Alaska*, (1974) 415 U.S. 308, the U.S. Supreme Court held that a defendant’s Sixth
16 Amendment rights to confront and cross examine a witness were violated when the state court refused
17 to order production of juvenile records of a key witness. The Supreme Court rejected that state’s
18 rationale of an “important interest in protecting the anonymity of juvenile offenders and that this
19 interest outweighs any competing interest this petitioner might have in cross-examining Green about
20 his being on probation.” *Id.* at 319. Failure to provide the written documents effectively barred trial
21 counsel from making a record from which to argue his key point: bias of the witness. *Id.* at 318.

22
23 Here, the defense is not asking for completely unrelated partial matches within a database, the
24 defense is asking for profiles in the database that were found through a CODIS search that partially
25 matched the profile of (13) suspects including Mr. Garcia-Torres.

26 Even if the government has “excluded” these individuals as suspects, Mr. Garcia-Torres is entitled
27 to conduct his own investigation and have his expert evaluate the conclusions reached by the lab, just
28

1 as if they had been identified by a fingerprint. Denying discovery of the other matching profiles of
2 those (12) individuals would deny Mr. Garcia-Torres the right to confront and undermine the key
3 evidence against him in this case.

4 The Government also argues that the evidence of the other (12) candidates is irrelevant and
5 immaterial because the Government's analyst has done analysis "by hand" and eliminated the other
6 parties. As described by the Government in its opposition, the analysts must perform an "empirical
7 evaluation"¹ of the data from the evidentiary sample and compare it to the profiles obtained from the
8 database. This is a subjective assessment and without having access to the partially matching profiles,
9 there is no way for the defense expert to assess the validity or strength of the lab's conclusion that one
10 profile alone "matched" the evidentiary profile.
11

12 While many believe that the assessment or analysis of DNA profiles is objective, technicians carry
13 out the final analysis. The Government also ignores the fact that in Santa Clara County, prosecuted by
14 the same office in another case, that these partially matching profiles were produced under protective
15 order.
16

17 The defendant can only attack or test this analysis by getting access to the profiles and having an
18 expert assess the Government's statement of exclusion. In this case, the confidentiality of the
19 information is outweighed by the defendant's rights under the 6th and 14th Amendments to effectively
20 confront and cross examine the witnesses and evidence against him and to conduct an investigation
21 into that evidence.
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