

1 JAMES R. WILLIAMS, County Counsel (S.B. #271253)  
JOSEPH M. LAKE, Deputy County Counsel (S.B. #246679)

2 Joseph.Lake@cco.sccgov.org  
OFFICE OF THE COUNTY COUNSEL  
3 70 West Hedding Street, East Wing, Ninth Floor  
San Jose, California 95110-1770  
4 Telephone: (408) 299-5900  
Facsimile: (408) 292-7240

5 Attorneys for Respondents  
6 SANTA CLARA COUNTY SHERIFF'S  
OFFICE and SERGEANT HERMAN LEON

ENDORSED  
FILED

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SUPERIOR COURT  
SANTA CLARA COUNTY  
P. Abocado

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

12 PEOPLE OF THE STATE OF CALIFORNIA,

No. 213515

13 Plaintiff,

**RESPONDENTS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANT'S MOTION  
FOR DISCOVERY (Evid. Code §§ 1043-1047)**

14 v.

15 ANTOLIN GARCIA-TORRES,

16 Defendant.

Date: September 14, 2017  
Time: 9:00 a.m.  
Dept.: 40

18 **I.**

19 **INTRODUCTION**

20 Defendant Antolin Garcia-Torres's Motion for Discovery ("Motion") alleges that Sheriff's  
21 Sergeant Herman Leon fabricated evidence in an attempt to link a hair from Sierra Lamar to a rope  
22 found in Defendant's vehicle, and then wrote a dishonest police report and offered false testimony at  
23 trial in support of the allegedly fabricated evidence, which the Motion asserts was central to his  
24 conviction for capital murder. The Motion also discusses allegedly false testimony by Sgt. Leon in  
25 another murder case, which came to light shortly after the jury's verdict in this matter. On that basis,  
26 the Motion seeks information from Sgt. Leon's personnel file regarding any previous complaints of  
27 false testimony, false police reports, and fabrication of evidence.

28 //

1 The Sheriff's Office opposes the Motion for four independent reasons:

2 1. The Defendant has failed to establish good cause to discover Sgt. Leon's entire  
3 personnel file since the accusations of misconduct relate only to fabricating evidence and filing  
4 dishonest reports or false testimony in support of the fabricated evidence.

5 2. If the Motion were to be granted to permit *Pitchess* discovery, Defendant is entitled  
6 only to disclosure of the names, addresses, and telephone numbers of complainants and witnesses  
7 involved in earlier complaints against Sgt. Leon involving the same misconduct alleged here, but not  
8 to the production of documents from his personnel file.

9 3. The Motion improperly seeks to conflate the Sheriff's Office's duties regarding  
10 *Pitchess* discovery with the prosecutor's non-delegable duties of *Brady* disclosure, but this Motion  
11 cannot be used to circumvent the five-year limitation set forth in Evidence Code Section 1045(b)(1).

12 4. The scope of disclosure ordered must also exclude the following three types of  
13 information identified in Evidence Code Section 1045(b) as non-discoverable: (1) information  
14 pertaining to misconduct alleged to have occurred more than five years prior to the earliest date of  
15 Sgt. Leon's alleged misconduct, which the Motion identifies as February 7, 2017 (Declaration of  
16 Counsel at 2:3-5); (2) any conclusions of investigators who handled such prior complaints; and (3)  
17 information so remote that its disclosure would offer little or no practical benefit.

## 18 II.

### 19 LAW AND ARGUMENT

#### 20 A. THE LEGAL STANDARD FOR DISCLOSURE UNDER *PITCHESS*

21 The Legislature has given peace officer personnel records a highly confidential and protected  
22 status. Cal. Penal Code § 832.7. Peace officer personnel records are protected by the constitutional  
23 right to privacy, and shall not be disclosed in any proceeding except by discovery pursuant to  
24 Evidence Code Sections 1043 and 1046. *See Rosales v. City of Los Angeles*, 82 Cal.App.4th 419,  
25 426 (2000). Under the discovery process established by *Pitchess v. Superior Court*, 11 Cal.3d 531  
26 (1974), a moving party seeking disclosure of peace officer personnel records must show "good  
27 cause" for release of constitutionally protected records by filing an affidavit setting forth the  
28 "materiality of the records" sought to the subject matter of the pending litigation. Cal. Evid. Code §

1 1043; Cal. Pen. Code §§ 832.7-832.8.

2 To show good cause under *Pitchess*, the moving party must provide a “specific factual  
3 scenario” establishing a “plausible factual foundation” for allegations of police misconduct. *City of*  
4 *Santa Cruz v. Municipal Court*, 49 Cal.3d 74, 85-86 (1989). A court should not order production of  
5 confidential records “based on a [factual] showing that is merely imaginable or conceivable ...”  
6 *People v. Thompson*, 141 Cal.App.4th 1312, 1318-1319 (2006). “Plausible” is not synonymous with  
7 “possible.” *Id.* Conclusory statements of counsel will not suffice to set forth the requisite specific  
8 factual scenario. *People v. Memro*, 38 Cal.3d 658, 686 (1985). For a scenario to be plausible, it  
9 must “present an assertion of specific police misconduct that is both internally consistent and  
10 supports the defense to the charges.” *Warrick v. Superior Court*, 35 Cal.4th 1011, 1026 (2005).  
11 This specificity requirement precludes requests for peace officer information that are irrelevant to a  
12 defendant’s pending case or charges. *Id.* at 1021. If a defendant establishes a specific factual  
13 scenario, he or she must further show how the discovery sought may lead to relevant and admissible  
14 evidence, or how it might support proposed defenses. *People v. Husted*, 74 Cal.App.4th 410, 417  
15 (1999).

16 **B. NO GOOD CAUSE FOR *PITCHESS* DISCOVERY HAS BEEN ESTABLISHED FOR**  
17 **DEFENDANT’S OVERBROAD REQUEST**

18 Only documentation of past officer misconduct that is similar to that alleged by a defendant  
19 is relevant and subject to discovery through a *Pitchess* Motion. *California Highway Patrol v.*  
20 *Superior Court*, 84 Cal.App.4th 1010, 1021 (2000). A *Pitchess* motion is overbroad if it goes  
21 beyond a specific factual scenario to expansively seek any records of potential misconduct. *City of*  
22 *San Jose*, 67 Cal.App.4th at 1150.

23 Here, Defendant makes the overbroad request to apparently review Sgt. Leon’s personnel file  
24 for “prior incidents of dishonest conduct.” Motion at 4:1. This request, which could conceivably  
25 encompass actions as mundane and irrelevant as entering the wrong hours worked, goes well beyond  
26 the specific misconduct alleged by Sgt. Leon of fabricating evidence and providing false testimony  
27 and false police reports to support the fabricated evidence. See Declaration of Counsel at 2:14-15  
28 and Motion at 3:22-4:1. In *City of San Jose*, the Court of Appeal was faced with a similarly

1 overbroad request by a defendant for *Pitchess* discovery of any peace officer personnel records  
2 relating to “‘illegal search and seizure...neglect of duty, dishonesty or deceit in the performance of  
3 duty, false arrest’ and acts ‘involving morally lax character’” based on an officer allegedly coercing  
4 consent to a search. *City of San Jose*, 67 Cal.App.4th at 1150. The Court of Appeal held that  
5 request was overbroad and therefore failed to establish good cause. *Id.* Here as well, Defendant has  
6 failed to provide a specific factual scenario to establish good cause for discovery into Sgt. Leon’s  
7 personnel file to search for any dishonest conduct.

8 **C. IF THE COURT FINDS GOOD CAUSE, DEFENDANT IS NOW ONLY ENTITLED**  
9 **TO THE NAME, ADDRESS, AND PHONE NUMBER OF PAST COMPLAINANTS**  
10 **AND WITNESSES, BUT NOT TO DOCUMENTS FROM SGT. LEON’S FILE.**

11 Should the Court find Defendant has shown good cause, he is only entitled to the names,  
12 addresses, and telephone numbers of prior complainants and witnesses that the Court determines are  
13 relevant after *in camera* review. *Haggerty v. Superior Court*, 117 Cal.App.4th 1079, 1090 (2004);  
14 Evid. Code § 1045. This judicially-created rule ensures that a defendant will not rely solely on  
15 prosecution investigation efforts, and imposes a further safeguard to protect peace officer privacy  
16 where the relevance of the information sought is minimal and where an officer’s privacy concerns  
17 are substantial. *City of Santa Cruz, supra*, 49 Cal.3d. at 84; *Pitchess v. Superior Court, supra*, 11  
18 Cal.3d at 537. Only if Defendant later shows the names, addresses, and telephone numbers of the  
19 prior complainants and witnesses are inadequate to prepare his case, may he bring a renewed motion  
20 to establish the need for additional information. *Carruthers v. Municipal Court*, 110 Cal.App.3d  
21 439, 442 (1980). Therefore, should the Court grant the Motion, Defendant is only entitled to the  
22 contact information for previous complainants and witnesses to those complaints that the Court has  
23 deemed relevant to the specific misconduct allegedly committed by Sgt. Leon.

23 **D. THE DUTY TO IDENTIFY AND DISCLOSE MATERIAL UNDER BRADY RESTS**  
24 **WITH THE PROSECUTOR ALONE, SO THE SHERIFF HAS NO INDEPENDENT**  
25 **DUTY TO PRODUCE BRADY MATERIAL FROM ITS PERSONNEL FILES.**

26 The Motion also request exculpatory or impeaching information within the meaning of *Brady*  
27 *v. Maryland* (1963) 373 U.S. 83. Motion, 9:16-18. This request for *Brady* material undermines the  
28 *Pitchess* process and defeats the five-year limitation established under California law. In support of  
this request, Defendant cites to *City of Los Angeles v. Superior Court*, 29 Cal.4th 1 (2000) to argue

1 that the five-year statutory limitation does not apply if “the Court finds older complaints to be  
2 favorable and material as defined in Brady.” Motion at 9:20-23. This fundamentally misstates the  
3 holding in *City of Los Angeles*, wherein the California Supreme Court held “we perceive no  
4 fundamental principle of justice that is offended by [the] prohibition against disclosing citizen  
5 complaints of officer misconduct that were filed ‘more than five years’ before the proceeding.” *City*  
6 *of Los Angeles*, 29 Cal.4th at 12.

7 The Sheriff’s Office does not dispute that *Brady* and its progeny require a *prosecutor* to  
8 disclose all exculpatory or impeachment evidence, but the custodian of records for the Sheriff’s  
9 Office is under no such corresponding obligation of disclosure. Hence, a hybrid motion seeking  
10 disclosure by the Sheriff’s Office of both *Pitchess* and *Brady* material is inapposite and undermines  
11 the limitations outlined by state law.

12 **E. IF THE COURT FINDS GOOD CAUSE, THE COURT SHOULD EXAMINE THE**  
13 **INFORMATION IN CHAMBERS AND ISSUE A PROTECTIVE ORDER.**

14 If the Court determines there is good cause for *Pitchess* discovery, Respondents request an *in*  
15 *camera* review of the file. Evidence Code Section 1045(b) authorizes the Court to determine the  
16 relevance of discovery by examining the information in chambers in conformity with Evidence Code  
17 Section 915 and out of presence of Defendant and his counsel. Evid. Code § 915; *see also City of*  
18 *Azusa v. Superior Court*, 191 Cal.App.3d 695, 696 (1987). Courts have long recognized that where  
19 governmental privilege has been asserted, defendant and his counsel have no right to be present  
20 during the in-camera review. *People v. Woolman*, 40 Cal.App.3d 952 (1974).

21 In addition, the following materials must be excluded from disclosure under Evidence Code  
22 Section 1045(b): (1) complaints concerning conduct occurring more than five years before the subject  
23 event of the pending action (*see City of Los Angeles v. Superior Court*, 29 Cal.4th 1 (2002)); (2) the  
24 conclusions of any officer investigating a complaint filed by a member of the public pursuant to  
25 section 832.5 of the Penal Code (*see City of San Jose v. Superior Court*, 5 Cal.4th 47, 55 (1993)); and  
26 (3) facts so remote as to make disclosure of little or no practical benefit. Evid. Code § 1045(b).

27 Evidence Code Section 1045(d) authorizes this Court, upon a showing of good cause, to issue  
28 an order protecting the officer or agency from unnecessary annoyance, embarrassment or oppression.

1 Additionally, Evidence Code Section 1045(e) authorizes this Court to order that any and all police  
2 officer personnel records ordered disclosed “not be used for any purpose other than a court  
3 proceeding pursuant to applicable law.” Accordingly, if this Court permits discovery, Respondents  
4 respectfully request a protective order directing Defendant, his counsel, and his agents not to use the  
5 disclosed information for any purpose other than these criminal proceedings and not to disclose the  
6 information to any other party.

7 **III.**

8 **CONCLUSION**

9 Defendant has failed to establish good cause for discovery into Sgt. Leon’s personnel file for  
10 any instances of prior dishonest conduct. If the Court does find that good cause has been shown,  
11 then discovery should be limited to incidents where Sgt. Leon fabricated evidence and provided false  
12 testimony or false police reports to support the fabricated evidence. Disclosure must also include  
13 only the names, addresses, and telephone numbers of complainants and witnesses regarding relevant  
14 complaints arising from conduct alleged to have occurred within five years prior to Sgt. Leon’s  
15 alleged misconduct, which the Motion identifies as occurring on February 7, 2017 (Declaration of  
16 Counsel, 2:3-5). Any such disclosure should exclude investigating officers’ conclusions and any  
17 facts so remote as to make disclosure of little or no practical benefit.

18 Respondents further request that any release of peace officer records in this matter be made  
19 under a protective order as set forth in Evidence Code Section 1045(e) to ensure that those records  
20 may not be used for any purpose other than court proceedings pursuant to applicable law.

21 Respectfully submitted,

22 Dated: September 7, 2017

JAMES R. WILLIAMS  
County Counsel

23  
24 By: 

JOSEPH M. LAKE  
Deputy County Counsel

25  
26 Attorneys for Respondents  
27 SANTA CLARA COUNTY SHERIFF’S  
OFFICE and SERGEANT HERMAN LEON

1 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

2 PROOF OF PERSONAL SERVICE

3 People of the State of California v. Antolin Garcia-Torres

Case No. 213515

4 I, Connie Chew, say:

5 I am employed in the County of Santa Clara, State of California. I am over the age of 18,  
6 and not a party to the within action. My business address is 70 West Hedding Street, East Wing, 9<sup>th</sup>  
7 Floor, San Jose, California 95110-1770. On **September 7, 2017**, I served the foregoing document  
described as:

8 **RESPONDENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION**  
9 **TO DEFENDANT'S MOTION FOR DISCOVERY (Evid. Code §§ 1043-1047)**

10 by delivering a true copy of the document to:

11 Deputy Alternate Defender Alfonso O. Lopez  
12 LAW OFFICES OF THE ALTERNATE DEFENDER  
13 701 Miller Street, First Floor  
San Jose, CA 95110

- 14  **BY MAIL:** I enclosed the documents in a sealed envelope or package addressed to the  
15 persons at the addresses listed above or on the attachment. I am readily familiar with the  
16 County's business practice for collection and processing of correspondence for mailing.  
17 Under that practice, said correspondence will be deposited with United States Postal Service  
on the same day with postage thereon fully prepaid at San Jose, California, in the ordinary  
18 course of business; there is delivery service by United States mail at the place so addressed. I  
19 am a resident or employed in the county where the mailing occurred.
- 20  **BY FACSIMILE:** Based on an agreement of the parties to accept service by fax  
21 transmission, I sent on this date from facsimile machine number (408) 292-7240 the foregoing  
22 documents to the addressee(s) at the facsimile number(s) indicated above or on the  
23 attachment. The facsimile machine I used complied with California Rules of Court, Rule  
2003 and no error was reported by the machine. Pursuant to California Rules of Court, Rule  
2006(d), I caused the machine to print a record of the transmission.
- 24  **BY PERSONAL SERVICE:** I personally delivered the document to the person at the  
25 address listed above. For a party represented by an attorney, delivery was made to the  
26 attorney or at the attorney's office by leaving the documents, in an envelope or package  
27 clearly labeled to identify the attorney being served, with a receptionist or an individual in  
28 charge of the office, between the hours of nine in the morning and five in the evening.
- BY E-MAIL:** Based on a court order or an agreement of the parties to accept electronic  
service, I caused a courtesy copy of the document to be sent to the persons at the electronic  
service addresses listed above or on the attachment.
- BY FEDEX:** I enclosed the documents in an envelope or package provided by an overnight  
delivery carrier and addressed to the persons at the addresses listed above. I am readily  
familiar with the County's business practice for collection and processing of correspondence  
for overnight mailing with FedEx. Under that practice, said correspondence will be deposited  
with FedEx on the same day with postage fully prepaid at San Jose, California, in the ordinary  
course of business; there is delivery service by FedEx at the place so addressed.

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- BY MESSENGER SERVICE:** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above or on the attachment and providing them to a professional messenger service for service.
- STATE:** 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 **September 7, 2017**, at San Jose, California.
- FEDERAL:** I declare under penalty of perjury under the laws of the United States of America that the above is true and correct and that I took said action(s) at the direction of a licensed attorney authorized to practice before this Federal Court.

  
\_\_\_\_\_  
CONNIE CHEW

SCANNED