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RECEIVED  
BY   
AUG 24 2017

(ENDORSED)  
**FILED**  
AUG 24 2017

Clark of the Court  
SUPERIOR COURT OF THE COUNTY OF SANTA CLARA  
BY  DEPUTY

Attorneys for Defendant  
Antolin Garcia-Torres

Jeffrey F. Rosen, DA  
District Attorney's Office  
Santa Clara County

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

17 AUG 24 PM 1:46

PEOPLE OF THE STATE OF

Case No.: 213515

CALIFORNIA,

Plaintiff,

NOTICE OF MOTION AND MOTION FOR  
DISCOVERY [EVID. CODE §§ 1043-1047]

vs.

Received by

ANTOLIN GARCIA-TORRES,

Date: 09/14/2017

AUG 24 2017

Time: 9:00 a.m.

Dept.: 40 HOJ

County Counsel

Defendant

Time Est.: 20 minutes

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

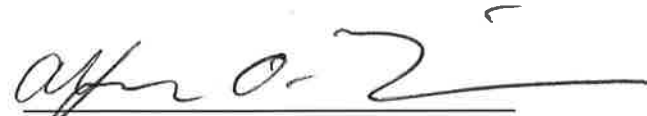
NOTICE IS HEREBY GIVEN that on September 14, 2017, at 9:00 a.m., in  
Department 40 of the above-entitled court, defendant Antolin Garcia-Torres will move  
for discovery of information from the personnel files for Sheriff Department, Santa Clara

NOTICE OF MOTION AND MOTION FOR DISCOVERY [EVID. CODE §§ 1043-1047]

1 County, Sergeant Herman Leon, #1685. Specifically, the defense seeks information  
2 related to prior complaints of lying, giving false testimony, drafting false or incomplete  
3 reports, fabricating evidence, withholding evidence, or the mishandling of evidence. This  
4 motion is based on the attached Points and Authorities and Declaration of Counsel and  
5 any argument presented at the hearing.

6 Date: August 24, 2017

7  
8 Respectfully submitted,  
9 David Epps,  
10 Alternate Defender

11   
12 Alfonso O. Lopez,  
13 Deputy Alternate Defender

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8 Telephone: (408) 299-7207

9 *Attorneys for Defendant*  
10 *Antolin Garcia-Torres*

(ENDORSED)  
**FILED**  
AUG 24 2017  
Clerk of the Court  
Superior Court, CA County of Santa Clara  
BY                      DEPUTY

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

PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

vs.

ANTOLIN GARCIA-TORRES,  
Defendant

Case No.: 213515

NOTICE OF MOTION AND MOTION FOR  
DISCOVERY [EVID. CODE §§ 1043-1047]

Date: 09/14/2017  
Time: 9:00 a.m.  
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Issue Presented

A defendant may obtain discovery of prior incidents documented in a law enforcement officer's personnel file upon a showing of relevance. The attached declaration claims that Sergeant Leon submitted false police reports, fabricated

NOTICE OF MOTION AND MOTION FOR DISCOVERY [EVID. CODE §§ 1043-1047]

1 evidence, and testified falsely and that it is expected prior incidents of dishonest  
2 conduct will be found within the personnel files.

3 Should the Court review the files in camera and release information relevant to  
4 this request?

5 Points and Authorities

6 Statement of Facts

7 Mr. Garcia-Torres was convicted of capital murder for the kidnapping and murder  
8 of Sierra Lamar but the jury returned a life verdict. The prosecutor's murder case was  
9 based on her disappearance, trace evidence found in Mr. Garcia-Torres' car and on  
10 clothing belonging to Ms. Lamar. One of the most significant pieces of evidence in the  
11 case was a hair attributed to Ms. Lamar by DNA testing allegedly found on a rope inside  
12 the trunk of Mr. Garcia-Torres' car. The significance of this hair was highly disputed at  
13 trial because photos of the rope taken when it was seized by law enforcement did not  
14 show any hairs. Months later, many hairs, including the one attributed to Ms. Lamar  
15 were found on the rope. Several law enforcement witnesses testified that the rope was  
16 left in the Sheriff's garage overnight, in an unsealed bag, prior to being booked into  
17 evidence. Government witnesses also testified that Sergeant Herman Leon was  
18 present at times when the car was being processed and evidence collected, although  
19 he was not participating in the collection of the items in the car.

20 Ms. Lamar's purse which contained various items of clothing was also seized and  
21 processed by the Sheriff Department. Their reports and testimony at trial indicate that  
22 two envelopes of hairs were collected during the processing of Ms. Lamar's personal  
23 items. These hairs were collected prior to the processing of Mr. Garcia-Torres' car. At  
24 trial, the defense elicited testimony from the government crime analyst that an envelope  
25 booked into evidence containing hairs from Ms. Lamar's personal items only contained  
26 eight hairs and the packaging listed nine. In other words, one hair was missing

1 according to the evidence label. Further, the analyst testified that most of the eight hairs  
2 remaining in the envelope were similar to Ms. Lamar's known hair samples. The other  
3 envelope, booked into evidence as Item 36 containing multiple hairs collected from the  
4 board where Ms. Lamar clothes were photographed, was missing. Later in the trial,  
5 Sergeant Leon testified that he had found the missing envelope of hair, Item 36, that it  
6 was misplaced and did not have an evidence label affixed. The missing hair and  
7 envelope of hairs were significant because it could explain where the hairs later  
8 observed on the rope came from.

9 Sergeant Leon's testimony that he found the missing envelope, Item 36, was  
10 false testimony and fabrication of evidence in this case. On September 23, 2015, the  
11 defense viewed the contents of Item 3, a black notebook, which contained a small  
12 envelope with 31 written in black ink. Sergeant Leon opened the envelope and allowed  
13 the defense investigator to photograph the empty envelope, three property tags and a  
14 plastic bag. On October 31, 2016, Sergeant Leon and other officers photographed the  
15 contents of Item 3 along with the empty small envelope, three property tags and a  
16 plastic bag. In those October photographs, loose debris including a loose small black  
17 speck and four loose small hairs are visible on the white paper. On February 7, 2017,  
18 during trial, Sergeant Leon reopened Item 3 looking for the missing envelope of hair,  
19 Item 36. He wrote a report claiming that the empty envelope with 31 written on it was  
20 the missing Item 36. He collected the loose debris including four small hairs that were  
21 among the contents of Item 3 and claimed they were the missing hairs from Item 36. He  
22 then took the envelope and debris to the crime lab where the four small hairs grew to  
23 ten hairs. He testified at the trial that the small envelope contained in Item 3 was in fact  
24 the missing envelope of hair, Item 36.

25 On May 10, 2017, the day after the jury rendered guilty verdicts in this case,  
26 another murder case was granted a new trial based in part on the false testimony of  
27

1 Sergeant Leon. Defense counsel in the Pilipina case filed their motion for a new trial on  
2 the Santa Clara County District Attorney on October 11, 2016. In the murder trial of  
3 David Pilipina and Eddie Rivera, Sergeant Leon was called by the government as an  
4 expert in crime scene investigations. A major issue in controversy was whether there  
5 was premeditation in the stabbing by Mr. Pilipina. The government contended that Mr.  
6 Pilipina preplanned the killing because he put on murder gloves to aid in the crime.  
7 Such a theory was supported by the expert opinion of Sergeant Leon who testified that  
8 he has reviewed cases where the suspect puts on gloves prior to the stabbing. The  
9 suspect would wear gloves to protect his hands from cuts and blood transfer. He  
10 supported his opinion by conservatively estimating that in 30 to 40 percent of the  
11 stabbing cases he reviewed since 2007, he noted through witness statements that the  
12 suspects wore gloves. His expert testimony was used to gain guilty verdicts of first  
13 degree murder.

14 Defense counsel in the Pilipina case was able to obtain the reports for the time  
15 period which Sergeant Leon said he had reviewed cases regarding non-custodial  
16 stabbings since 2007. Contrary to his expert testimony, there were no other stabbing  
17 cases where the suspect used gloves within the District Attorney case files since 2007.  
18 The Pilipina Case was the sole case where a stabbing suspect wore gloves during the  
19 act based on witness statements. In other words, based on the over 100 reports  
20 provided to defense counsel by District Attorney Office, Sergeant Leon testified falsely  
21 when he claimed he had reviewed cases since 2007 where stabbing suspects wore  
22 gloves. He further testified falsely by providing a false statistic stating that between 30  
23 to 40 percent of the stabbing cases he reviewed involved the suspect wearing gloves.

24 The trial court in the Pilipina Case made findings that based on the testimony of  
25 Sergeant Leon and the reports obtained from the District Attorney, Sergeant Leon's  
26 testimony was false. The government claimed that Sergeant Leon may have relied on

1 reports not in the possession of the District Attorney, however, they did not present such  
2 reports despite being given the opportunity to do so. Based on the evidence presented  
3 in the New Trial Motion, the court found that Sergeant Leon presented false testimony.

4 The prior false testimony of Sergeant Leon in the Pilipina case is evidence that  
5 would impeach his credibility regarding the missing envelope of hair in this case.

6 Moreover, given his prior pattern and modus operandi of introducing false testimony to  
7 the jury, such evidence of prior conduct was crucial to proving that he testified falsely in  
8 this case and fabricated the missing Item 36 during trial. Had the defense been aware  
9 of the false testimony by Sergeant Leon in the Pilipina case, the defense would have  
10 impeached his testimony regarding the "misplacement" of the envelope of hair.

11 Moreover, the defense would have argued that Sergeant Leon fabricated evidence in  
12 this case by tampering with the rope and causing the hairs from Ms. Lamar's personal  
13 items to be placed on the rope from Mr. Garcia-Torres' car. Had the jury been aware of  
14 Sergeant Leon's prior presentation of false and fabricated testimony in the Pilipina case,  
15 they would not have trusted the most crucial evidence in the case. Namely, that the hair  
16 belonging to Ms. Lamar being found on a rope in the trunk of Mr. Garcia-Torres' car was  
17 placed there by Sergeant Leon. Moreover, the prosecution's entire case would have  
18 been devastated given that it was tainted with false testimony, fabrication and  
19 mishandling of the evidence because Sergeant Leon was the center of all aspects of the  
20 investigation including the previously unsolved Safeway incidents.

#### 21 Argument

#### 22 **I. The Court should conduct an in camera hearing and release any 23 information contained in the personnel files that are responsive to this 24 motion**

25 Evidence Code sections 1043-1047 provide the process by which a defendant  
26 may seek information from a police officer's personnel file. It holds that a defendant who  
27 seeks such information must file a noticed motion with the court. (Evid. Code § 1043,  
28

1 subd. (b)). The motion must include: identification of the proceeding in which the  
2 information is sought, identification of the officer whose records are sought, the  
3 government agency with custody and control over the records, and the time and place  
4 where the motion will be heard. (*Id.*) It must also include a description of the type of  
5 information sought and an affidavit or declaration setting forth good cause for discovery.  
6 (*Id.*)

7 Good cause for disclosure requires the defense to show that the material sought  
8 is relevant to the case. In other words, a defendant need demonstrate only a logical link  
9 between the defense and the information sought and explain how the information would  
10 support the defense or impeach the officer's version of events. (*People v. Sanderson*  
11 (2010) 181 Cal.App.4<sup>th</sup> 1334). Depending on the circumstances of the case, a sufficient  
12 allegation may consist of a denial of the facts asserted in the police report. (*Uybungco v.*  
13 *Superior Court* (2008) 163 Cal.App.4<sup>th</sup> 1043). The good cause standard may be met by  
14 a declaration signed on information and belief and it does not have to be based on  
15 personal knowledge. (*Garcia v. Superior Court* (2007) 42 Cal.4<sup>th</sup> 63). A reasonable  
16 belief may be "premised upon a rational inference from known or reasonably assumed  
17 facts." (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74).

18 The good cause showing is measured by relatively relaxed standards that serve  
19 to insure the production for trial court review of all potentially relevant documents.  
20 (*People v. Gains* (2009) 46 Cal.4<sup>th</sup> 172, 179). The inquiry does not involve an  
21 assessment or weighing of the persuasive value of the evidence presented. Indeed, a  
22 defendant may obtain discovery without a judicial determination that the potential  
23 defense is credible. (*ibid.*)

24 Motions to discover information from an officer's personnel file are not limited to  
25 issues of excessive force. (*People v. Memro* (1985) 38 Cal.3d 658; *People v. Husted*  
26 (1999) 74 Cal.App.4<sup>th</sup> 410). Indeed, the California Supreme Court has noted that a goal



1 of discovery is to obtain information for possible use to impeach or cross-examine an  
2 adverse witness. (*Foster v. Superior Court* (1980) 107 Cal.App.3d 218, 227).

3       Declarations similar to the one submitted in this case have been found sufficient  
4 to warrant an in camera hearing in the past. (See *People v. Husted*, supra, 74  
5 Cal.App.4<sup>th</sup> 410). For example, counsel submitted a declaration *Husted* that the officer  
6 made material misstatements with respect to his observations and fabricated his client's  
7 alleged dangerous driving. (*Id.*) He further claimed that his client did not drive in the  
8 manner the officer described. (*Id.*)

9       Another example is from *People v. Johnson* (2004) 118 Cal.App.4<sup>th</sup> 292.  
10 Counsel's declaration recited allegations from the police report and then denied specific  
11 facts alleged. The Court of Appeal found that the declaration set forth a sufficient factual  
12 showing that the officer's truthfulness was material to the case.

13 **II. Due process requires the Court to release information that is favorable to  
14 the defense**

15       The rules surrounding the release of information from an officer's personnel file  
16 are grounded in due process and the right to a fair trial. (*People v. Gutierrez* (2003) 112  
17 Cal.App.4<sup>th</sup> 1463). They work in tandem with the due process requirement that the  
18 prosecution disclose any favorable evidence that is material to the issues of guilt or  
19 punishment. (See *Brady v. Maryland* (1963) 373 U.S. 83).

20       *Pitchess* requires the disclosure of more information than what would qualify  
21 under *Brady*. In fact, a defendant is entitled to material from an officer's file that will  
22 "facilitate the ascertainment of facts," even if it may not change the result or even be  
23 admissible at trial. (*People v. Gutierrez*, supra, 112 Cal.App.4<sup>th</sup> 1463 Thus, the limitation  
24 of disclosure of complaints to those that are less than five years old (Evid. Code § 1054,  
25 subd. (b)(1)) does not apply in the Court finds older complaints to be favorable and  
26 material as defined in *Brady*. (*City of Los Angeles v. Superior Court* (2002) 29 Cal.4<sup>th</sup> 1).

1 **III. The in camera hearing should be conducted in a manner permitting**  
2 **meaningful appellate review**

3 The Supreme Court described the manner in which a trial court should conduct a  
4 *Pitchess* hearing in *People v. Mooc*. (*People v. Mooc* (2001) 26 Cal.4<sup>th</sup> 1216). It ruled  
5 that the custodian of records must bring all potentially relevant documents from the  
6 personnel file to the in camera hearing. While the custodian does not need to bring the  
7 entire file, he should bring anything that might potentially be relevant so that the Court  
8 remains the center of decision-making. In that vein, the Court should require the  
9 custodian to list, in the presence of a court reporter, whatever documents he did not  
10 bring and explain why they were left out. Finally, the trial Court should make a record of  
11 the documents it reviewed and explain why some are released and others are not. The  
12 record may include a copy of the file. Any transcript prepared or copy made should be  
13 sealed and kept confidential, but stored in a way that will allow an appellate court to  
14 meaningfully review the trial court's decision. (*Id.*)

15 Conclusion

16 The attached declaration presents a defense, demonstrates how information  
17 from the personnel files are relevant to the case, and offers a reasonable belief that the  
18 County of Santa Clara, Sherriff Department, retains information like that sought. The  
19 defense has therefore met its burden and this Court should conduct an in camera  
20 hearing and ultimately release relevant information.

21 Date: August 24, 2017

22 Respectfully submitted,  
23 David Epps,  
24 Alternate Defender

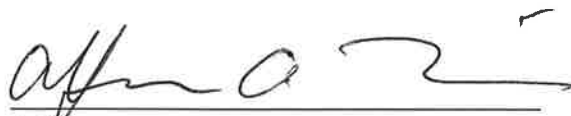
25   
26 Alfonso O. Lopez,  
27 Deputy Alternate Defender



- 1 6. That in the photographs of the contents of Item 3 there appears to be four small loose
- 2 hairs and a loose black speck as debris on the white paper;
- 3 7. That during trial on February 7, 2017, after it became apparent that Item 36, an envelope
- 4 of hairs, was missing, Sergeant Leon reexamined Item 3 and claimed in his report the
- 5 debris and empty small envelope was the missing Item 36;
- 6 8. That Sergeant Leon took the debris, four hairs and black speck, from the white paper to
- 7 the Santa Clara County crimelab where it was photographed on February 9, 2017;
- 8 9. That the photos from the crimelab showed even more hairs, 10 hairs and one black
- 9 speck;
- 10 10. That Sergeant Leon testified at the trial that the small envelope inside Item 3 was in fact
- 11 the lost envelope of hair, Item 36;
- 12 11. That based on the prior misconduct in the other murder case and in this case there is
- 13 good cause to for an in camera hearing to examine Sergeant Leon's personnel file for
- 14 more misconduct which is needed to prove a pattern of false testimony, false reporting,
- 15 and fabrication of evidence at the motion for a new trial.

16 I declare under the penalty of perjury that the foregoing is true and correct.

17 Executed on August 24, 2017, San Jose, California.

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20 \_\_\_\_\_  
21 Alfonso O. Lopez  
22 Deputy Alternate Defender  
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )

No. 213515

3 )  
4 COUNTY OF SANTA CLARA )

People v. Garcia-Torres

5 I am a citizen of the United States and am employed in the County of Santa Clara over  
6 the age of eighteen years and not a party to this action; My business address is: 701 Miller  
7 Street, San Jose, CA 95110-2121.

(ENDORSED)  
**FILED**  
AUG 24 2017

8 On August 24, 2017, I served the within NOTICE OF MOTION AND MOTION FOR  
9 DISCOVERY [EVID. CODE §§ 1043-1047] on the Plaintiff in this action, <sup>Clerk of the Court</sup> personally  
10 serving a true and correct copy thereof on:


11 **THE OFFICE OF THE DISTRICT ATTORNEY**  
12 SANTA CLARA COUNTY  
13 70 West Hedding Street  
San Jose, CA 95110

14 **THE OFFICE OF THE COUNTY COUNSEL**  
15 SANTA CLARA COUNTY  
16 70 West Hedding Street, East Wing, 9<sup>th</sup> floor  
San Jose, CA 95110

17 **THE OFFICE OF THE SHERIFF**  
18 SANTA CLARA COUNTY  
19 Custodian of Records  
55 West Younger Ave  
San Jose, CA 95110

20 I declare under the penalty of perjury that the foregoing is true and correct.

21 Executed on April 24, 2015, at San Jose, California.

22   
23 \_\_\_\_\_  
Alfonso O. Lopez  
24 Deputy Alternate Defender