

1 **EDWARD J. BLUM, Esq., (SBN 185163)**
2 **LAW OFFICE OF EDWARD J. BLUM**
3 **3699 WILSHIRE BLVD., STE. 700**
4 **LOS ANGELES, CA 90010**

5 **(213) 479-5322 / FAX (213) 403-6373**

6 **Attorney for Defendant, MARGARITA JONES**

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES, METROPOLITAN DISTRICT**
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12
13 THE PEOPLE OF THE STATE OF CALIFORNIA,
14 Plaintiff,
15 v.
16 01 MARGARITA JONES (01/15/1958),
17 Defendant.
18) Case No.: 09 MP 12127
19)
20) DEFENDANT MARGARITA JONES'S NOTICE
OF MOTION AND MOTION FOR PRE-TRIAL
DISCOVERY (PITCHESS / BRADY);
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF EDWARD
J. BLUM
DATE: January 19, 2010
TIME: 8:30 a.m.
DEPT: 73

21 TO: J. A. FARROW, COMMISSIONER OF THE CALIFORNIA HIGHWAY PATROL AND
22 HIS DESIGNATED REPRESENTATIVES IN THE SOUTHERN DIVISION AND CENTRAL
23 AREA:

24 PLEASE TAKE NOTICE that on the **January 19, 2009**, at 8:30 a.m.in
25 Department 73 of the above-entitled court, the defendant will move for
26 an order directing each of you to make available the materials herein
27 described to defendant's attorney:

28 (1) All complaints from any and all sources relating to acts of
violation of constitutional rights, fabrication of charges, fabrication

1 of evidence, fabrication of reasonable suspicion and/or probable cause,
2 illegal search/seizure; false arrest, perjury, dishonesty, writing of
3 false police reports, false or misleading internal reports including but
4 not limited to false overtime or medical reports, and any other evidence
5 of misconduct amounting to moral turpitude within the meaning of *People*
6 *v. Wheeler* (1992) 4 Cal.4th 284 against officer(s) **D.T. MOSQUEDA**
7 **(#018400)**. Defendant specifically requests production of the names,
8 addresses, dates of birth, and telephone numbers of all persons who
9 filed complaints, who may be witnesses, and/or who were interviewed by
10 investigators or other personnel from the California Highway Patrol, the
11 dates and locations of the incidents complained of, as well as the date
12 of the filing of such complaints.

13 (2) The defendant is *entitled* to discovery of any discipline imposed
14 upon the named officer(s) as a result of the investigation of any citizen
15 complaint described in items one. (*City of San Jose v. Superior Court*
16 (*Michael B.*) (1993) 5 Cal.4th 47.)

17 (3) Any other material which is exculpatory or impeaching within the
18 meaning of *Brady v. Maryland* (1963) 373 U.S. 83. Evidence is favorable and
19 must be disclosed if it will either help the defendant or hurt the
20 prosecution. (*People v. Coddington* (2000) 23 Cal.4th 529, 589, overruled on
21 other grounds in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn.
22 13.) The California Supreme Court specifically empowered trial courts to
23 examine police personnel files for *Brady* material which is discoverable
24 without regard to the five-year limitation applicable to *Pitchess* discovery.
25 (*City of Los Angeles v. Superior Court (Brandon)* (2001) 29 Cal.4th 1, *Abatti*
26 *v. Superior Court* (2003) 112 Cal.App.4th 39, 52-56.)

27 (4) The names, addresses, contact information, and transcripts of
28 testimony of all persons who testified at Civil Service Commission hearings
wherein the named officer(s) were accused of any of the misconduct sought in

1 items 1 and 3, above. Copies of evidence, including but not limited to all
2 writings, audio tapes and video tapes, submitted to the Civil Service
3 Commission (where practical) and/or a list of evidence items submitted to
4 the Commission or the Hearing Officer. In addition, deliver all findings,
5 rulings, and statements made by the Commission, its members, and its hearing
6 officer(s) relevant to the discipline of the named officers.

7 (5) The statements of all police officers who are listed as either
8 complainants or witnesses within the meaning of items 1 and 3, above.

9 This motion will be based upon this Notice, the declaration of
10 counsel, attached points and authorities, and such additional evidence and
11 arguments as may be presented at the hearing.

12 In *People v. Mooc* (2001) 26 Cal.4th 1216, the California Supreme Court
13 set forth procedures which must be followed in every case in which a trial
14 court conducts an in camera review.

15 The custodian of records must present to the court all potentially
16 relevant documents. If the custodian has a question whether a particular
17 document is relevant, it should be presented for the court's review. The
18 trial court must make a record of all documents examined by the court. If
19 the documents are not voluminous, the court can copy them and place them in
20 a confidential file; the court can prepare a list, log, or index of all the
21 documents reviewed, or the court may state for the record what documents
22 have been examined.

23 The custodian of records must be examined *under oath* and with a court
24 reporter taking down all the questions and answers regarding the documents
25 the custodian has reviewed and presented or chosen not to present to the
26 court. The custodian of records must tell the court for the record what
27 other documents not presented to the court were included in the complete
28

1 personnel record and why those were deemed irrelevant or otherwise
2 non-responsive to the *Pitchess* motion.

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4 Dated: December 16, 2009

LAW OFFICE OF EDWARD J. BLUM

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6 Edward J. Blum, Esq. Attorney
7 for Defendant, MARGARITA JONES
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1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION
2 FOR PRETRIAL DISCOVERY (PITCHESS / BRADY)

3 **I. STATEMENT OF THE CASE**

4 Defendant has been charged in the instant case with violations of
5 Vehicle Code Sections 23152(a) & 23152(b). Defendant has pleaded not guilty
6 to the charges.

7 **II. STATEMENT OF RELEVANT FACTS**

8 Defendant MARGARITA JONES (Hereafter "JONES") was arrested by police
9 for driving under the influence on September 24, 2009.

10 The arresting officers contend that JONES'S was involved in a
11 collision on the I-10 freeway westbound at Indiana Street, that JONES was in
12 the #6 lane going at 65 mph, that JONES was approached by MOSQUEDA while she
13 was standing on the side of the freeway, that defendant was transported to
14 LA County Hospital, that defendant blew once into the PAS at the hospital,
15 and that defendant had suffered two previous DUIs.

16 Defendant JONES denies the facts as related by the officer. JONES
17 denies that the collision was on the I-10 at Indiana St. and contends that
18 the collision was on the 101/5/10 connector at the Soto St. exit. JONES
19 denies that she was in the #6 lane going 65 mph and contends that she was in
20 the lane for the exit to Soto St. significantly slower than 65mph. JONES
21 denies that MOSQUEDA approached her while she was standing on the side of
22 the highway, she contends that she was immobilized after the accident until
23 the paramedics moved her. JONES denies that she was transported to LA
24 County Hospital, and contends that she was, in fact, transported to White
25 Memorial Hospital. JONES denies that she blew once into the PAS at the
26 hospital, but contends that she blew at least 5 times and was informed that
27 none of the samples was sufficient. JONES denies that she has suffered 2
28 previous DUIs, in fact she has not.

1 **III. ARGUMENT**

2 **1. DEFENDANT IS ENTITLED TO DISCOVERY OF COMPLAINTS AGAINST THE**
3 **OFFICERS IN THIS CASE.**

4 The California Supreme Court has ruled that the basic principle
5 underlying defense discovery in a criminal case stems from the fundamental
6 proposition that [an accused] is entitled to a fair trial and an intelligent
7 defense in light of all relevant and reasonable accessible information.”
8 (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 535.) *Pitchess* made it
9 clear that “an accused. . . may compel discovery by demonstrating that the
10 requested information will facilitate the ascertainment of the facts and a
11 fair trial. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d. 74,
12 84.)

13 These fundamental principles have been applied by the California
14 Supreme Court to allow criminal defendants to discover police personnel
15 records. (*City of Santa Cruz, supra*, 49 Cal.3d at p. 84). The Legislature
16 codified these discovery rules (as they relate to police personnel records)
17 in Evidence Code sections 1043 to 1047.

18 In *Warrick*, the California Supreme Court plainly set forth the low
19 showing a defendant must make in order to obtain an in camera review of
20 police personnel records. We hold that to obtain in-chambers review a
21 defendant need only demonstrate that the scenario of alleged officer
22 misconduct *could or might have occurred*. *Warrick v. Superior Court* (2005)
23 35 Cal.4th 1011, 1016, emphasis added.) A simple (uncorroborated) denial
24 of the facts asserted in the police report is a sufficient showing by
25 defendant. *Id.* at 1024-1025.)

26 In this case, the officers have put forth one version of what
27 happened, a version that would support probable cause. The defendant
28 contends that something different happened. In the defendant’s scenario,
probable cause would not have been established by the officers.

1 In other words, Defendant denies the allegations in the police report.
2 Evidence of complaints against the officer of falsifying probable cause or
3 facts can be used to impeach the officer's credibility.

4 Therefore, the Court must conduct an in-camera review of the officer's
5 file.

6 **2. DEFENDANT IS ENTITLED TO DISCOVERY OF CIVIL SERVICE COMMISSION**
7 **INFORMATION**

8 In *Copley Press v. Superior Court* (2006) 39 Cal.4th 1272, the
9 California Supreme Court held that every aspect of a police officer's
10 administrative appeal remains secret, including even the officer's name. As
11 a result of the *Copley* decision it would appear that Board of Rights and
12 Civil Service Commission records may only be obtained through *Pitchess* or
13 *Brady* discovery. For the purpose of applying the confidentiality provisions
14 of Penal Code section 832.5, the Civil Service Commission functions as part
15 of a department or agency that employs peace officers.

16 **3. EVIDENCE OF THE POLICE OFFICER'S MORALLY TURPITUDINOUS BEHAVIOR**
17 **IS DISCOVERABLE.**

18 There can be no doubt that *Pitchess* discovery includes discovery of an
19 officer's morally turpitudinous conduct. *People v. Husted* (1999) 74
20 Cal.App.4th 410, 417.

21 "Statutory prohibitions on impeachment with conduct evidence other
22 than felony convictions (see Evid. Code, '' 787, 788) no longer apply in
23 criminal cases.@ *People v. Wheeler* (1992) 4 Cal.4th 284, 291-292.

24 **4. DEFENDANT IS ENTITLED TO DISCOVER ALL EVIDENCE THAT HELPS HIS**
25 **CASE OR HURTS THE PROSECUTIONS CASE.**

26 The prosecutor in a criminal case has the absolute, non-delegable duty
27 to provide the defense with exculpatory information pursuant to the United
28 States Supreme Court's decision in *Brady v. Maryland* (1963) 373 U.S. 83.
Brady obligations are self-executing and the prosecutor has a duty to learn

DECLARATION OF EDWARD J. BLUM IN SUPPORT
OF MOTION FOR PRETRIAL DISCOVERY

I, EDWARD J. BLUM, declare:

1. I am attorney of record for defendant in the instant case. If called upon to testify I could and would do so competently.

2. People, including arrestees, police officers, police supervisors, and private citizens, make complaints to police departments concerning law enforcement officers. The complainants make a variety of allegations, including charges that the officers used excessive force, displayed aggressive conduct, or engaged in violence; displayed homosexual bias; displayed bigotry and prejudice, including making racial slurs; fabricated probable cause; planted evidence; covered up the use of excessive force; were biased in a manner affecting the officer=s credibility and/or judgment; coerced a confession, falsified a *Miranda* warning, or fabricated a confession or admission; illegally searched or seized a person; and engaged in acts of dishonesty and/or moral turpitude.

3. Police departments make and keep written, taped, and computerized records of complaints, and such records are kept in the personnel files or other files maintained by the department. Police departments will investigate these complaints. Investigators conduct correspondence with or interview witnesses and other people and make notes, memoranda, and recordings of conversations in connection with their investigations. The investigators prepare and file reports, findings, opinions, and conclusions concerning their investigations. Disciplinary proceedings may be commenced or taken as a result of these complaints and investigations.

4. Police departments keep in their files notes, findings, memoranda, recordings, reports, transcripts, opinions, and conclusions of the investigations made and of the disciplinary proceedings commenced or taken as the result of those complaints. Those files contain the names,

1 addresses, telephone numbers, and statements of people interviewed during
2 such investigations and during the disciplinary proceedings commenced or
3 taken as the result of such complaints. The files may also contain
4 diagrams, photographs, police reports, audio tapes, video tapes, and an
5 assortment of writings documenting the investigations undertaken in response
6 to a complaint or inquiry.

7 5. The materials described in the Notice of Motion for Pretrial
8 Discovery are contained in the personnel files of the specified police
9 officers and those files are in the possession and control of the named
10 police department. The materials contained in these personnel files will
11 not be made available to defendant or counsel except upon order of this
12 court.

13 6. It is necessary that these materials be made available to the
14 defendant in order to properly prepare this case for motions and trial. The
15 requested discovery is material and relevant to the trial of this case (as
16 well as any motions) and is necessary for the defense preparation for the
17 following reasons:

18 7. I am informed and believe that Defendant JONES denies the
19 facts as related by the officer. JONES denies that the collision was on the
20 I-10 at Indiana St. and contends that the collision was on the 101/5/10
21 connector at the Soto St. exit. JONES denies that she was in the #6 lane
22 going 65 mph and contends that she was in the lane for the exit to Soto St.
23 significantly slower than 65mph. JONES denies that MOSQUEDA approached her
24 while she was standing on the side of the highway, she contends that she was
25 immobilized after the accident until the paramedics moved her. JONES denies
26 that she was transported to LA County Hospital, and contends that she was,
27 in fact, transported to White Memorial Hospital. JONES denies that she blew
28 once into the PAS at the hospital, but contends that she blew at least 5

1 times and was informed that none of the samples was sufficient. JONES
2 denies that she has suffered 2 previous DUIS, in fact she has not.

3 8. These materials would be used by the defense to locate witnesses to
4 testify that the officer has a character trait, habit, and custom of
5 engaging in misconduct of the type alleged in this case. These witnesses
6 would also testify to specific instances of misconduct of the type alleged
7 in this case.

8 9. This evidence would be admissible and relevant to show the
9 officer(s) have a propensity to engage in the alleged misconduct, and that
10 the officer(s) engaged in such misconduct in this case.

11 10. Such information would also be used by the defense to effectively
12 cross-examine the officer at trial, and for impeachment purposes where
13 appropriate. Additionally, such information would be used by the defense in
14 the discovery of other admissible evidence.

15 I declare under penalty of perjury under the laws of the State of
16 California that the foregoing is true and correct. Executed this 16th day
17 of December 2009, at Los Angeles, California.

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19 _____
20 Edward J. Blum, Esq.
21 Attorney for Defendant,
22 MARGARITA JONES
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1 EDWARD J. BLUM, Esq., (SBN 185163

2 LAW OFFICE OF EDWARD J. BLUM
3 3699 WILSHIRE BLVD., STE. 700
4 LOS ANGELES, CA 90010

5 (213) 479-5322 / FAX (213) 403-6373

6 Attorney for Defendant, ROBERTO CASTRO

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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES, METROPOLITAN DISTRICT
11

12
13) Case No.: 09 MP 12127
14 THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
15) (PROPOSED) ORDER GRANTING PRE-
Plaintiff,) TRIAL DISCOVERY (PITCHESS / BRADY)
16)
v.)
17)
18 01 MARGARITA JONES (1/15/1958),)
19)
20 Defendant.)
21)

22 IT IS HEREBY ORDERED THAT the following items are to be delivered to
23 Edward J. Blum, Esq., counsel for Defendant MARGARITA JONES, or his/her
24 representative in Department 73 of this Court, on or before the ____ day of
25 _____, 2009:

26 (1) All complaints from any and all sources relating to acts of
27 violation of constitutional rights, fabrication of charges, fabrication
28 of evidence, fabrication of reasonable suspicion and/or probable cause,
illegal search/seizure; false arrest, perjury, dishonesty, writing of

1 false police reports, false or misleading internal reports including but
2 not limited to false overtime or medical reports, and any other evidence
3 of misconduct amounting to moral turpitude within the meaning of *People*
4 *v. Wheeler* (1992) 4 Cal.4th 284 against Officer(s) D. MOSQUEDA (#18400).

5 (2) Any discipline imposed upon the named officer(s) as a result of
6 the investigation of any citizen complaint described in items one.

7 (3) Any other material which is exculpatory or impeaching within the
8 meaning of *Brady v. Maryland* (1963) 373 U.S. 83. (*Abatti v. Superior Court*
9 (2003) 112 Cal.App.4th 39, 52-56.)

10 (4) The names, addresses, contact information, and transcripts of
11 testimony of all persons who testified at Civil Service Commission hearings
12 wherein the named officers were accused of any of the misconduct sought in
13 items 1 and 3, above. Copies of evidence, including but not limited to all
14 writings, audio tapes and video tapes, submitted to the Civil Service
15 Commission (where practical) and/or a list of evidence items submitted to
16 the Commission or the Hearing Officer. In addition, deliver all findings,
17 rulings, and statements made by the Commission, its members, and its hearing
18 officer(s) relevant to the discipline of the named officers.

19 (5) The statements of all police officers who are listed as either
20 complainants or witnesses within the meaning of items 1 and 3, above.

21 **IT IS SO ORDERED.**

22 Dated: _____

23 _____

24
25 Judge of the Superior Court
26
27
28