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Attorney for Defendant,

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. Tamara V. Defendant.	CASE NO.: 1PY05120 NOTICE OF MOTION FOR DISCOVERY CONCERNING LAW ENFORCEMENT OFFICERS EVANS AND MUNOZ (PITCHESS MOTION); PROPOSED ORDER Date : December 8, 2011 Time: 8:30 am Place: Dept 121

TO THE ABOVE-ENTITLED COURT, THE CITY ATTORNEY OF LOS ANGELES, STATE OF CALIFORNIA AND THE CHIEF OF POLICE OF THE LOS ANGELES POLICE DEPARTMENT:

PLEASE TAKE NOTICE that on December 8, 2011, in Department 121, at 8:30 A.M., or as soon thereafter as the matter may be heard, the defendant, TAMARA V., by and through her attorney of record, DAVID BAUM, Esq., will move that the Court order the District Attorney's Office and the above-noticed law enforcement agencies (at all times hereafter referred to as "The Departments") to make available for examination, copying, and for the hearing on this motion the materials described below regarding the following Los Angeles Police Department officers: Evans (#39082) and Munoz (#39410).

The following materials and information are hereby requested:

1. All complaints from any and all sources relating to acts indicating or constituting

excessive force, aggressive behavior, racial bias, gender bias, ethnic bias, coercive conduct, or any violation of constitutional rights, made against the above named officers.

2. All complaints from any and all sources relating to acts indicating or constituting officer misconduct amounting to moral turpitude within the meaning of People v. Wheeler (1992) 4 Cal.4th 284, including but not limited to allegations of false arrest, planting evidence dishonesty, illegal search and seizure, the fabrication of charges and/or evidence, fabrication of probable cause, falsification of police reports, false testimony, perjury, false or misleading internal reports including but not limited to false overtime or medical reports, or any act involving morally lax character by the above-named officers.

3. The names, addresses, and telephone numbers of all persons who have filed complaints with or who have been interviewed by investigators or other personnel from the Los Angeles Police Department, hereafter "the Department" for acts indicating or constituting excessive force, aggressive behavior, racial bias, gender bias, ethnic bias, coercive conduct, or any violation of constitutional rights, dishonesty, false arrest, illegal search and seizure, the fabrication of charges and/or evidence, fabrication of probable cause, falsification of police reports, false testimony, perjury, false or misleading internal reports including but not limited to false overtime or medical reports, excessive force, aggressive behavior, or any act involving morally lax character by the above-named officers.

4. All statements, written or oral, by persons who have brought complaints as described in Items 1 or 2, above.

5. All statements, written or oral, made by persons interviewed by the Departments, its investigators and other personnel during investigation into complaints as described in Items 1 or 2, above.

6. The statements of all police officers who are listed as either complainants or witnesses to any acts identified in Items 1 or 2, above.

7. All tape recordings and/or transcriptions thereof, and notes and memoranda by investigating personnel of the Department made pursuant to investigations described in Items 1

or 2, above.

8. The names and assignments of investigators and other personnel employed by the Department as described in Items 1 or 2, above.

9. The written procedures established by the Department to investigate citizen complaints against the Department or its personnel.

10. All records of the Department concerning records of statements, reputations and opinions, including, but not limited to, findings, letters, formal reports, and oral conversations made by superior officers and other officers, of the above-named police officer(s), which pertain to acts indicating or constituting dishonesty, false arrest, illegal search and seizure, the fabrication of charges and/or evidence, or any act involving morally lax character by the above-named officers.

11. All records of discipline imposed by the Department on the above-named police officers for conduct specified in Item 1 or 2, and 10.

12. Any and all material which is exculpatory or impeaching within the meaning of Brady v. Maryland (1963) 373 U.S. 83.

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

Date: November 8, 2011

Respectfully submitted,

LAW OFFICES OF DAVID M. BAUM

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DAVID M. BAUM
Attorney for Defendant
Tamara V.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

TAMARA V ("V."), the defendant in this action, is charged with possession of a controlled substance in violation of H&S Code §11377(a). The circumstances surrounding her arrest call into question the truthfulness, motives, and potential bias of arresting Officers Evans (#39082) and Munoz (#39410).

1. The Officers' Claims

According to the arrest report prepared by Officer Evans, on August 21, 2011 at approximately 7:15 a.m., Officers Evans and Munoz conducting an "extra patrol" on Kling Street, east of Lankersheim Blvd., and observed a white Toyota Camry, legally parked on the north side of the street, its engine running, with two occupants in the vehicle. The officers decided to do a "consentual encounter with the occupants of the vehicle." (Arrest Report, page 2)

Upon approaching the vehicle the officers noticed a "burnt rolling paper containing burnt marijuana (joint) laying in plain view on the center console." The officers noticed the smell of marijuana emitting from the vehicle. The driver, Felicia Rodriguez, was approached and contacted by officers. (Arrest Report, page 2)

During her conversation with Rodriguez, Officer Evans states that she recognized the passenger, Defendant V., from previous contact wherein officer Evans had arrested V. for possession of narcotic around the same area.

Consent was given by Rodriquez to search the vehicle. Both defendants exited the vehicle. Officer Munoz searched the vehicle, including a brown purse belonging to defendant Rodriguez. In the brown purse, officer Munoz discovered 30 pills with the image of an alien imprinted on one side, resembling "Esctasy" pills. Rodriquez confirmed the brown purse was hers. (Arrest Report, page 2)

The report states that Officer Munoz also searched a red wallet belonging to Ms. V. and discovered two clear baggies containing an off white powdery substance, which the officers believed to be a controlled substance. V. was arrested for §11377(a) H&S, possession of a

controlled substance. When the officers informed Ms. V. that she was under arrest, she spontaneously stated that the baggies were empty and there wasn't a usable amount. In the last sentence of the second paragraph on page 3 of the Arrest Report, appearing as an afterthought or postscript, the report states that inside the walled "my partner also found a round blue pill." The report states that Rodriguez was arrested for possession of Ecstasy, and V. was placed under arrest for §11377(a) H&S "possession of Katamine." (Arrest Report, P.3)

2. Inconsistencies in The Arrest Report.

There are several significant inconsistencies contained within the Arrest Report that call into question the truthfulness, motives, and bias of officers Evans and Munoz.

The first and most significant inconsistency concerns the fact relating to the officer's alleged discovery of the blue pill resembling "Ecstasy" in Ms. V.'s wallet. The narrative in the Arrest Report discusses the search of the wallet, and discovery of the baggies containing an off white powdery substance. The report then states that V. was informed of the discovery of the baggies, and responded that the baggies were empty. No mention of the blue pill was made during this communication between V. and Officer Evans. In fact, the facts concerning discovery of the blue pill comes in the very last line of the paragraph, which simply states that the pill had also been discovered in the wallet. This last line does not flow with the previous narrative concerning the search, and appears to have been inserted as an afterthought.

With respect to the alleged discovery of the blue pill, the Arrest Report fails to include any facts concerning the time, nature or specific location within the wallet where the pill was allegedly discovered. It is unclear from the report whether the blue pill was found during the initial search of the wallet, or at a later time. However, since the report does not list a second search of the wallet, it can be assumed that the pill was discovered at the same time as the baggies. Therefore, it is most curious that the officers made no mention of the blue pill during the initial discussion with V., merely informing her that she was under arrest for possession of Katamine.

Similarly, in her post Miranda statement given after her booking at the North Hollywood

Station, no mention is made of the blue pill allegedly found during the search of Ms. V.'s wallet. After being read Miranda warnings, Ms. V. stated that the baggies were empty and that they used to contain "Special K". At no time do the officers make any statements concerning their discovery of the blue pill, and do not question Ms. V. concerning her alleged possession of the blue pill which they believe to be Ecstasy. In fact, it appears that Ms. V. is completely unaware that the officers had allegedly found a blue pill in her wallet. Moreover, Ms. V. does not demonstrate any consciousness of guilt relating to the possibility of Ecstasy having been located in her wallet. Ms. V.'s post Miranda statement reveals that she is only aware of the presence in her wallet of baggies formerly containing Katamine. (Arrest Report, page 3)

When Officers discovered thirty (30) blue pills in co-defendant Rodriguez's possession, the Officers inquired of Rodriguez, asking "what's this?" The same inquiry was made with respect to the empty baggies in V.'s wallet. However, there was no such inquiry with respect to the alleged discovery of the blue pill in V.'s wallet.

Additional inconsistent statements by Officer Evans to Ms. V., include a statement that Officer Evans made to Ms. V., that Officer Evans had approached the vehicle because she wanted to say "hi" to Ms. V., whom she recognized from prior contact.

Moreover, there is evidence indicating that Officer Evans, who had previously arrested Ms. V. for possession of controlled substance, was upset that the previous arrest had not resulted in a conviction on the charges. During the initial contact upon approaching the vehicle, Officer Evans had asked Ms. V. if she was on probation. When V. responded that she was not, Officer Evans asked V., apparently incredulous, "are you sure?" In addition, after the discovery of the empty baggies in her wallet, Ms. V. asked officer Evans, "are you going to arrest me for empty bags?" Officer Evans responded, "maybe since it's the second time the court will do something this time." Statements made by Officer Evans to Ms. V. indicate that Officer Evans was determined to make a possession charge stick, notwithstanding the lack of evidence. There is ample evidence to support Ms. V.'s contention that Officer Evans, desperate to secure a conviction of Ms. V. for possession of narcotics, falsified the Arrest Report to reflect that a single blue pill had been found in V.'s wallet, when in fact, that was not the case. In fact, after

the arrest, co-defendant Rodriguez informed Ms. V. that while the officers only booked thirty pills into evidence, the bag in fact contained more than thirty pills. Where the additional pills went remains a mystery.

The evidence reveals that Officer Evans had the means, opportunity and motive to falsity the Arrest Report with respect to the alleged discovery of a single blue pill in Ms. V.'s wallet.

II.

THE DEFENDANT IS ENTITLED TO DISCOVERY OF THE PERSONNEL RECORDS OF OFFICERS EVANS AND MUNOZ

On a showing of good cause a criminal defendant is entitled to discovery of relevant documents or information in the personnel records of a police officer accused of misconduct against the defendant. (Evid.Code, § 1043, subd.(b).) Good cause for discovery exists when the defendant shows both " 'materiality' to the subject matter of the pending litigation and a 'reasonable belief' that the agency has the type of information sought." (City of Santa Cruz v. Municipal Court (1989) 49 Cal.3d 74, 84, 260 Cal.Rptr. 520, 776 P.2d 222) A showing of good cause is measured by "relatively relaxed standards" that serve to "insure the production" for trial court review of "all potentially relevant documents." (Ibid.)

The California Supreme Court has ruled that the basic principle underlying defense discovery in a criminal case stems from the "fundamental proposition that [an accused] is entitled to a fair trial and an intelligent defense in light of all relevant and reasonable accessible information. Pitchess v. Superior Court (1974) 11 Cal.3d 521, 535. Pitchess made it clear that "an accused . . . may compel discovery by demonstrating that the requested information will facilitate the ascertainment of the facts and a fair trial." City of Santa Cruz v. Municipal Court (1989) 49 Cal.3d 74, 84.

These fundamental principles have been applied by the California Supreme Court to allow criminal defendants to discovery police personnel records. Warrick v. Superior Court (2005) 35 Cal. 4th 1101, 29 Cal.Rptr.3d 2, 112 P.3d 2, City of Santa Cruz v. Municipal Court supra, 49 Cal.3d 74, 84. The Legislature codified these discovery rules (as they relate to police personnel records) in Evidence Code §§1043 to 1047. This codification served to expand these

principles of discovery as they relate to police personnel records. "We have previously held that the Legislature, in adopting the statutory scheme in question, 'not only reaffirmed by expanded' the principles of criminal discovery articulated by this court in the landmark case of Pitchess v. Superior Court . . ." Ibid.

In order to obtain discovery of the type requested in this case, a criminal defendant must first meet the requirements of Evidence Code §1043. The threshold showing here, according to the California Supreme Court, is "very low." City of Santa Cruz v. Municipal Court, supra, 49 Cal.3d 74, 83. The Supreme Court has rejected the notion that a defendant must follow the rather strict requirements of the various civil discovery procedures, nothing that such a procedure would run counter to the protection of the Fifth Amendment to the United States Constitution in many instances. Pitchess v. Superior Court, supra, 11 Cal.3d 531, 536.

Character traits of complaining witnesses relevant to the defense may be shown by specific acts, opinion, or reputation evidence. (Evid. Code §1103) Once a defendant shows relevancy, that the material cannot be obtained otherwise, and generally specifies the material sought, the defendant is entitled to discovery of that material. In Re Valerie E. (1975) 50 Cal.App.3d 213. The California Supreme Court discussed the Pitchess and Brady discovery in City of Los Angeles v. Superior Court (Brandon) and does not prohibit the disclosure of Brady information." The Court further states, "It is undisputed that materials that 'may be used to impeach a witness' fall within the class of information subject to Brady because impeachment information affects the fairness of trial. Stickler v. Green, supra, 527 U.S. at p. 282, fn. 21; see, United States v. Ruiz (2002) 536 U.S. 622, 122 S.Ct. 2450.

It has specifically been held that complaints of fabrication of probable cause and planting of evidence are discoverable when it would be a defense to the charge that the probable cause was fabricated and the evidence planted in order to cover up the officer's use of excessive force. People v. Gill (1997) 60 Cal.App.4th 743, 750. Defense counsel's declaration that the officer fabricated the evidence is sufficient to merit discovery. Ibid.

In People v. Memro (1985) 38 Cal.3d 658, 214 Cal.Rptr. 832, 700 P.2d 44, the Supreme Court explained that the statutes governing discovery motions "do not limit discovery of such

records to cases involving altercation between police officers and arrestees, the context in which Pitchess arose." Memro, supra, 38 Cal.3d at p. 679. Indeed, the Court also noted that "one legitimate goal of discovery is to obtain information for possible use to impeach or cross-examine an adverse witness . . ." Foster v. Superior Court (1980) 107 Cal.App.3d 218, 227, 165 Cal.Rptr. 701. Id., at p. 677.

Likewise, other cases have held that Pitchess motions are proper for issues relating to credibility. See, Larry E. v. Superior Court (1987) 194 Cal.App.3d 25, 28-33; 239 Cal.Rptr. 264; Pierre C. v. Superior Court (1984) 159 Cal.App.3d 1120, 1122-1123; 206 Cal.Rptr. 82 [discovery motion for records pertaining to 'racial prejudice, false arrest, illegal search and seizure, the fabrication fo charges and/or evidence, dishonesty and improper tactics . . .' sufficient because the minor alleged a defense of false arrest and alleged that a substantial issue at trial 'would be the character, habits, customs and credibility of the officers.] People v. Hustead (1999) 74 Cal.App.4th 410, 417.

To be discoverable it is irrelevant whether or not the information sought is or will be admissible in Court. It need only be something which will assist the defense in the preparation of the case or which may lead to relevant material. Cadena v. Superior Court (1978) 79 Cal.App.3d 212; Kelvin L. v. Superior Court (1976) 62 Cal.App.3d 823.

The defendant is not required to show all defenses or to commit to a specific defense. In order to discovery information from a police officer's personnel file, a defendant need only show possible defenses. Arcelona v. Municipal Court (1980) 113 Cal.App.3d 523; Kelvin L. v. Superior Court, supra, 62 Cal.App.3d 823.

No personal statement of the intended defenses by the defendant is required; an affidavit of counsel of what the defense "may" be (such as the defense may be self-defense) suffices. People v. Memro (1985) 38 Cal.3d 658; Kelvin L. v. Superior Court, supra, 62 Cal.App.3d 823. There is no requirement whatsoever for a personal statement from the defendant. A Pitchess affidavit authored by defense counsel alleging facts showing relevance need not be based upon personal knowledge, and the defense need not show there are prior complaints to get discovery. City of Santa Cruz v. Municipal Court, supra, 49 Cal.3d 74. A criminal defendant is not required

to furnish foundational facts about the information being sought because the defendant is not in a position to know whether the complaints in fact established the custom, habit, intent, motive or plan which is being alleged. People v. Memro, supra, 38 Cal.3d 65.

"To show good cause as required by section 1043, defense counsel's declaration in support of a Pitchess motion must propose a defense or defenses to the pending charges. The declaration must articulate how the discovery sought may lead to relevant evidence or may itself be admissible direct or impeachment evidence (citations) that would support those proposed defenses. These requirements ensure that only information "potentially relevant" to the defense need be brought by the custodian of the officer's records to the court for its examination in chambers. (citations)" Warrick v. Superior Court (2005) 29 Cal.Rptr.3d 2, 11, 35 Cal. 4th 1101, 112 P.3d 2.

Counsel's affidavit must also describe a factual scenario supporting the claimed officer misconduct. That factual scenario, depending on the circumstances of the case, may consist of a denial of the facts asserted in the police report. Id. at p.12

A criminal defendant is entitled to discovery the discipline imposed upon a police officer as a result of citizen complaints of misconduct. City of San Jose v. Superior Court (Michael B) (1993) 5 Cal.4th 47. It makes no difference whether or not the police agency sustained the complaints or exonerated the officer. The complaints remain discoverable regardless of any action or inaction taken by the police agency. People v. Zamora (1980) 28 Cal.3d 88.

Any claim of privilege requires the imposition of sanctions when the material being sought is relevant to the defense. Dell M. v. Superior Court (1977) 70 Cal.App.3d 782.

The defendant is not required to show all defenses or to commit to a specific defense. In order to discovery information from a police officer's personnel file a defendant need only show possible defenses. Arcelona v. Municipal Court (1980) 113 Cal.App.3d 523; Kelvin L. v. Superior Court, supra, (62 Cal.App.3d 823.

The defendant is not required to show that the officers used excessive force in this case or that the officers used excessive force in any other case in order to obtain the requested discovery. Caldwell v. Municipal Court (1976) 58 Cal.App.3d 377.

No case has held that a criminal defendant must "prove" the allegations of misconduct in order to obtain discovery. The case law has consistently only required the moving party to raise the issue, not to prove that the misconduct actually occurred or to prove that any prior, similar misconduct occurred.

One Court described a proper declaration as one which provides "adequate factual details demonstrating the manner in which the requested records pertained to his client's possible defenses." Arcelona v. Municipal Court (1980) 113 Cal.App.3d 523, 530.

Another Court examined a fairly conclusionary declaration and found it sufficient because it allowed the trial court to reasonably conclude the information the defendant sought would assist in preparing the defense outlined in the moving papers.

> "We are satisfied that appellant has demonstrated the materiality of the information that he requested. Appellant was charged with possession of cocaine. Through his counsel, appellant asserted that '[i]t will be a defense in this matter that the alleged contraband was placed on [appellant] by [Officer Hunt] to cover up for his use of excessive force and that the officer has [a] pattern of fabricating probable cause in dope cases.' Toward this end, appellant's counsel enlarged the discovery request to include prior complaints against Officer Hunt of fabrication of probable cause and planting of evidence to cover up his use of excessive force. Any history of complaints of similar misconduct in Officer Hunt's personnel file could lead to admissible evidence of 'habit or custom,' which could aid in appellant's defense to the charge. An accused is entitled to any 'pretrial knowledge of any unprivileged evidence, or information that might lead to the discovery of evidence, if it appears reasonable that such knowledge will assist him in preparing his defense . . ..' People v. Ainsworth (1990) 217 Cal.App.3d 247, 250-251, original italics. We hold that appellant has demonstrated good cause for the requested discovery and that the trial court abused its discretion by summarily denying the discovery motion. The trial court should have conducted an in camera hearing to determine the presence of any discoverable material in Officer Hunt's personnel file." People v. Gill (1997) 60 Cal.App.4th 743, 750.

The key to the determination of the sufficiency of a declaration is whether or not it sets forth sufficient facts from which the Court may conclude officer conduct will be an issue at trial.

> "As noted above, appellant must make an initial showing that the information he is seeking is material to the case at hand. City of Santa Cruz v. Municipal Court, supra, 49 Cal.3d at p. 85. In the present case, appellant's counsel asserted in his declaration that the officer made material misstatements with respect to his observations, including fabricating appellant's alleged dangerous

> driving maneuvers. He also stated that appellant asserted that he did not drive in the manner described by the report and that his driving route was different from that found in the report. In addition, he claimed that a material and substantial issue in the trial would be the character, habits, customs and credibility of the officer. These allegations were sufficient to establish a plausible factual foundation for an allegation that the officer made false accusations in his report. It demonstrated that appellant's defense would be that he did not drive in the manner suggested by the police report and therefore the charges against him were not justified." People v. Hustead, supra, 74 Cal.App.4th 410, 416-417.

"To determine whether the defendant has established good cause for in-chambers review of an officer's personnel records, the trial court looks to whether the defendant has established the materiality of the requested information to the pending litigation." Warrick v. Superior Court (2005) 29 Cal.Rptr.3d 2, 13, 35 Cal. 4th 1101, 112 P.3d 2.

In the present case, defendant's counsel's declaration sufficiently establishes the materiality of the requested information. The material cannot be obtained otherwise. The personnel records are accessible to the LAPD. The personnel records sought are described with particularity, and the disclosure of the information sought is limited to the information necessary to present Defendant's possible defenses.

Ms. V., who is of foreign descent, may also assert that inculpatory evidence against her was falsified and fabricated due to racial, national origin or religious bias. She may also assert that exculpatory evidence vindicating her was omitted or not investigated due to racial, national origin or religious bias. The actions of Officers Evans and Munoz demonstrate that they have just such a bais against V.. Personnel records are then clearly relevant to demonstrate whether they may be impeached at trial because they in fact have such a bias, weather they bear the capacity for truthfulness, and whether they have been truthful in their reporting of this matter.

In this case, counsel's declaration is specific and detailed. Defendant's declaration is more than sufficient and it would be an abuse of discretion to deny the motion.

III.

THE DEFENDANT IS ENTITLED TO DISCOVERY OF ALL STATEMENTS

OBTAINED FROM OFFICERS EVANS AND MUNOZ AND ALL WITNESSES AS A RESULT OF ANY INTERNAL INVESTIGATION OF THE ARREST IN THIS CASE

If an internal investigation of the arrest in this case was conducted, the defendant is seeking statements given by eyewitnesses and participants in the arrest in this case. Production of these items is mandatory. In Gonzales v. Municipal Court (1977) 67 Cal.App.3d 111, the Court of Appeal determined that a Los Angeles Police Department Officer's statement about an arrest to internal affairs investigators is discoverable by the arrestee in the fact of the officer's attempt to invoke the attorney/client privilege. The Court held the statements were not privileged as a matter of law.

The mandate that the police disclose statements regarding events which also form the basis for criminal charges was conclusively decided in Vela v. Superior Court, supra, 208 Cal.App.3d 141. In Vela, the City of Culver City claimed a privilege to withhold the written statements of police officers. The statements which the City refused to disclose contained the officers' written descriptions of the actions they took and why they took them.

The shooting incident in Vela formed the basis of the prosecution of the defendant. The officers were interviewed regarding the incident by the Special Investigations Team of the Internal Affairs Division of the Police Department. The defendant requested the statements of the police officers involved and the City of Culver City asserted the attorney-client privilege. The Court of Appeal in Vela held:

> "Here, the City seeks to protect from disclosure written statements of the very police officers whose trial testimony will be necessary to prove the criminal charges filed against the defendants. In such circumstances adherence to a statutory attorney-client privilege must give way to pretrial access when it would deprive a defendant of his constitutional rights of confrontation and cross-examination."

Vela v. Superior Court, supra, 208 Cal.App.3d 141, 150-151.

> "Conceivably, parts of the officer's statement may not be relevant to the underlying criminal action, and the trail court should, in light of all the facts and circumstances, initially decide how much, if any, must remain confidential. Defendant's entitlement to discovery is not absolute. The attorney-client privilege may be overridden only if, and to the extent, necessary to ensure defendant's constitutional rights of confrontation and cross-

> examination. Thus, the trial court must weight defendant's constitutionally based need against the statutory privilege claimed by City and determine which privileged matters, if any, are essential to ensure defendant's right of confrontation and access to matters reasonably required to permit a full and fair cross-examination. The trial court must also create a record of the in camera hearing, and the findings made therein, adequate to permit appellate review of this ruling."

Vela v. Superior Court, supra, 208 Cal.App. 3d 41, 150-151.

Thus, the obligation of the trial Court is to first determine if the statements are relevant to the incident in question. If the statements are not at all relevant of the incident, as they are here, no balancing test is necessary. A criminal defendant's Sixth Amendment rights to confrontation and cross-examination requires absolute full disclosure of every word, phrase, sentence, paragraph, and punctuation mark of such statement. Clearly, written statements from the arresting police officers that they undertook or did not undertake certain actions and why they acted as they did in this specific case is relevant to the determination of any disputed issues.

Once the trial court determines the statements are relevant to the issues in dispute, then the trial court should review the statements and redact those portions of the statement that are irrelevant. As can be seen from the actual language in Vela, the Court of Appeal held that "the trial court must weigh defendant's constitutionally based need against the statutory privilege claimed by City" only as to those "parts of the officer's statement [that] may not be relevant to the underlying criminal action." Vela v. Superior Court, supra, 208 Cal.App.3d 141, 150-151. The Court of Appeal merely conjectured that it was "conceivable" that portions of an officer's statement to the Internal Affairs Division may not be relevant to the underlying crime, and under such circumstances the petitioner is not entitled to disclosure. Thus, any portions of the officers' statements which deal with matters not involving petitioner's case would not be discoverable and would properly be redacted by the trial court.

Penal Code §1054.1 specifies that the prosecution is required to disclose to the defense the statements of witnesses the prosecution intends to call at trial. This Penal Code Section thus mandates that the prosecution turn over the statements of the arresting officers:

> "Relevant written or recorded statements of witnesses or reports of

> the statements of witnesses whom the prosecutor intends to all at the trial, including any reports or statements of experts made in conduction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecution intends to offer in evidence at the trial." Pen. Code §1054.1, subd. (f).

It is true that Evidence Code §1043 continues to have viability, notwithstanding Penal Code §1054.1, et. seq. which was enacted as a part of Proposition 115. Albritton v. Superior Court (1990) 225 Cal.App.3d 961. Nonetheless, Evidence Code §1043 has not been construed so as to prevent a criminal defendant from obtaining statements of the arresting officers. Penal Code §1054.1 in fact mandates that the prosecution turn over the statements of all witnesses it intends to call and makes no provision to withhold such statements.

IV.

EVIDENCE OF A POLICE OFFICER'S MORALLY TURPITUDINOUS MISCONDUCT IS DISCOVERABLE

There can be no doubt that Pitchess discovery includes discovery of an officer's conduct.

> "[The People] argued at oral argument that Pitches discovery motions are limited solely to issues of officer violence. Such is not the case. In People v. Memro (1985) 38 Cal.3d 658, 214 Cal.Rptr. 832, 700 P.2d 446, the Supreme Court explained that the statutes governing discovery motions 'do not limit discovery of such records to cases involving altercation between police officer and arrestees, the context in which Pitchess arose.' Memro, supra, 38 Cal.3d at p. 679.) Indeed, the Court also noted that 'one legitimate goal of discovery is to obtain informant 'for possible use to impeach or cross-examine an adverse witness . . .." (Foster v. Superior Court (1980) 107 Cal.App.3d 218, 227, 165 Cal.Rptr. 701.)' Id. at p. 677.) Likewise, other cases have held that Pitchess motions are proper for issues relating to credibility. (See, Larry E. v. Superior Court (1987) 194 Cal.App.3d 25, 28-33, 239 Cal.Rptr.265 [motion seeking discovery of complaints for 'aggressive behavior, violence of excessive force, improper police tactics, dishonest and racial or class prejudice' sufficient to require in camera review when minor alleged that he did not use force against the officers, that the officer's [sic] lied about his actions and planted evidence, and the information was relevant to show officers had a motive to lie and could show potential bias which would affect the officer's credibility as a witness]; Pierre C. v. Superior Court (1984) 159 Cal.App.3d 1120, 1122-1123, 206 Cal.Rptr. 82 [discovery motion for records pertaining to 'racial prejudice, false arrest, illegal search and seizure, the fabrication of charges and/or evidence, dishonesty and improper tactics . . .' sufficient because the minor alleged a defense of false arrest and alleged that a substantial issue at trial 'would be the character,

habits, customs and credibility of the officers.']).)" (People v. Hustead (1999) 74 Cal.App.4th 410, 417.)

The California Supreme Court has repeatedly held that evidence of conduct amounting to moral turpitude, should it exist, is admissible to help the trier of fact determine whether any given witness is telling the truth or is the kind of person who would subvert the truth-finding process. The Supreme Court has never carved out an exception that allows police officers to be able to testify unfettered by prior instances of morally turpitudinous conduct. No witness is allowed to testify cloaked in a false aura of veracity.

Because such evidence is admissible at trial, there must also be a mechanism allowing the discovery of this evidence by the defense. Although couched in terms of a prosecutor's duty to disclose evidence favorable to the defense, the Court of Appeal in People v. Santos (1994) 30 Cal.App.4th 169, held that Constitutional Due Process requires a defendant be granted discovery of this type of evidence of misconduct involving moral turpitude.

Prior to the enactment of Proposition 8, impeachment with prior non-felony conduct was barred by the Evidence Code. Proposition 8, however, changed that rule. People v. Harris (1989) 47 Cal.3d 1047, 1080-1081. In Harris, the Supreme Court considered the defense claim that "the prosecutor's examination of Sergeant Wachsmuth was improper and the testimony inadmissible insofar as it related to Linicome's reliability as an informant in past cases. Id., at p. 1080. The Court noted the rule barring such prior instances, based on Evidence Code §787. The Court held, "We, therefore, agree with the conclusion of the Court of Appeal in People v. Taylor, supra, 180 Cal.App.3d 622, 631, that section 28(d) effected a pro tanto repeal of Evidence Code section 790, and find no basis on which to distinguish Evidence Code sections 786 and 787." Id., at pp. 1081-1082. The Court concluded, "Admission of this evidence of Linicome's past reliability as an informant, and the prosecutor's reference to it in closing argument, therefore, involved neither error nor misconduct." Id., at p. 1083.

In 1991, the Supreme Court again turned to this issue, addressing the admissibility of conduct by Steele, a prosecution witness, to impeach Steele's testimony. "Hence, statutory rules against impeachment with acts not culminating in a felony conviction and with character traits

not bearing directly upon honesty or veracity do not apply. People v. Harris (1989) 47 Cal.3d 1047, 1081-1082 [255 Cal.Rptr. 352, 767, P.2d 619]; see Evid. Code §§786-788. Evidence that Steele threatened witnesses suggests he is the type of person who would harm others and subvert the Court's truth-finding process for selfish reasons. Both traits are indicative of a morally lax character from which the jury could reasonably infer a readiness to lie." People v. Mickle (1991) 54 Cal.3d 140, 168; citation omitted.

In 1992, the Supreme Court summarized Harris and Mickle: "Harris and Mickle, both supra, employed this reasoning to conclude that statutory prohibitions on impeachment with conduct evidence other than felony convictions (see, Evid. Code. §§787, 788) no longer apply in criminal cases. In Harris, we held that section 28(d) renders evidence of prior reliability as a police informant admissible to attack or support a witness' credibility. (47 Cal.3d at pp. 1080-1082) In Mickle, we noted that a jailhouse of informant's threats against witnesses in his own case implied dishonesty and moral laxity. Hence, we ruled, the threats were relevant and admissible to impeach him under section 28(d) (54 Cal.3d at p. 168.)" People v. Wheeler (1992) 4 Cal.4th 284, 291-292.

The Supreme Court in Wheeler held that prior acts of misconduct not amounting to a felony may be used to impeach any witness, subject only to the requirements that the conduct relate to moral turpitude and subject to Evidence Code §352:

> "The reasoning of Harris and Mickle clearly governs the use of misdemeanor misconduct for impeachment. By its plain terms, section 28(d) requires the admission in criminal cases of all 'relevant' proffered evidence unless exclusion is allowed or required by an 'existing statutory rule of evidence relating to privilege or hearsay or Evidence Code, [s]ections 352, 782 or 1103,' or by new laws passed by two-thirds of each house of the Legislature. The limitations on impeachment evidence contained in Evidence Code sections 787 and 788 do not fall within any of section 28(d)'s stated exceptions to its general rule that relevant evidence is admissible. It follows that Evidence Code sections 787 and 788 no longer preclude the introduction of relevant misdemeanor misconduct for impeachment in criminal proceedings. People v. Wheeler, supra, 4 Cal.4th 284, 292.

Moreover, the Supreme Court concluded that the conduct used to impeach need not even amount to a misdemeanor: "But section 28(d) makes immoral conduct admissible for

impeachment whether or not it produced any conviction, felony or misdemeanor. Indeed, misdemeanor convictions are subject to a hearsay objection when offered to prove the witness committed the underlying crimes. Thus, impeaching misconduct now may, and sometimes must, be proven by direct evidence of the acts committed. These acts might not even constitute criminal offenses." People v. Wheeler, supra, 4 Cal.4th 284, 297, fn. 7; citations and italics omitted.)

The Supreme Court noted, "Of Course, the admissibility of any past misconduct for impeachment is limited at the outset by the relevance requirement of moral turpitude." People v. Wheeler, supra, 4 Cal.4th 284, 296. The Supreme Court ruled that apart from the relevance requirement of moral turpitude, evidence of past misconduct is limited only by Evidence Code section 352's restrictions. Id., at pp. 295-297.

In sum, prior instances of dishonest behavior are admissible to impeach the credibility of testifying police officers. Prior instances of lying are admissible, People v. Harris, supra, 47 Cal.3d 1047, 1080-1082; prior instances of threats of force are admissible People v. Mickle, supra, 54 Cal.3d 140, 168, and any prior misconduct amounting to moral turpitude is admissible People v. Wheeler, supra, 4 Cal.4th 284, 295-297, to impeach a testifying witness.

It must be stressed that the Supreme Court did not create one rule for civilian witnesses and a separate rule for police officers. The rule created by the Supreme Court applies to all witnesses: if that witness has engaged in conduct amounting to moral turpitude, that evidence is admissible to impeach the witness, subject only to the strictures of Evidence Code §352.

A witness who engages in conduct amounting to moral turpitude is a dishonest person who displays a morally lax character. This is true whether the witness is a gang member who has strong-armed and bullied others or a police officer who uses his or her badge as a shield to engage in improper conduct. The threshold standard established by the Supreme Court is simply one of relevance. People v. Wheeler, supra, 4 Cal.4th 284, 295-297.

The information being requested, if obtained by the defense, either would be admissible itself or would lead to the discovery of admissible evidence. Thus, the informant is discoverable.

In Re Valerie E. (1975) 50 Cal.App.3d 213.

V.

A CRIMINAL DEFENDANT IS ENTITLED TO DISCOVER ALL EVIDENCE WHICH HELPS THE DEFENSE CASE AND/OR HURTS THE PROSECUTION CASE

The prosecutor in a criminal case has the absolute, non-delegable duty to provide the defense with exculpatory information pursuant to the United 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 of any favorable evidence known to others acting on the government's behalf, including the police. Kyles v. Whitley (1995) 514 U.S. 419, 437. The Brady obligation is neither dependent upon California's Pitchess v. Superior Court (1974) 11 Cal.3d 531, Evid. Code §1043, et. seq. discovery scheme nor limited by it. While Brady and Pitchess discovery may coexist and are even interrelated, Pitchess cannot serve to trump or limit the prosecutor's Constitutionally-based Brady obligations.

The California Supreme Court has clearly and plainly explained what must be disclosed:

> "Evidence is favorable and must be disclosed if it will either help the defendant or hurt the PROSECUTION. People v. Coddington (2000) 23 Cal.4th 529, 589, overruled on other grounds in Price v. Superior Court (2001) 25 Cal.4th 1046, 1069, fn. 13.

Brady discovery exists independent of statute. As was stated by the California Supreme Court:

> "The prosecutor's duties of disclosure under the due process clause are *wholly independent* of any statutory scheme of reciprocal discovery. The due process requirements are self-executing and need no statutory support to be effective. Such obligations exist whether or not the state has adopted a reciprocal discovery statute. Furthermore, if a statutory discovery scheme exists, these due process requirements operate outside such a scheme. The prosecutor is obligated to disclosure such evidence *voluntarily*, whether or not the defendant makes a request for discovery.
>
> No statute can limit the foregoing due process rights of criminal defendants, and the new discovery chapter does not attempt to do so. On the contrary, the new discovery chapter contemplates disclosure *outside* the statutory scheme pursuant to constitutional requirements as enunciated in Brady, supra, 373 U.S. 83, 83 S.Ct. 1194, and its progeny. Izazaga v. Superior Court (1991) 54 Cal.3d

356, 378, emphasis in original.

This reference, of course, refers to Brady discovery in the context of Penal Code section 1054, et. seq., reciprocal discovery. The California Supreme Court's holding that Brady discovery is completely independent of California's mandatory discovery scheme also violation, without more. But the prosecution, which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of 'reasonable probability' is reached. This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others action on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation (whether, that is, a failure to disclose is in good faith or bad faith, see Brady, 373 U.S. at 87, 83 S.Ct., at 1196-1197), the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable." Kyles v. Whitley, supra, 514 U.S. 419, 437-438.

The Supreme Court has explained this obligation requires Brady evidence to be carefully examined and that any question regarding whether or not evidence should be disclosed should be resolved in favor of disclosure.

> "Unless, indeed, the adversary system of PROSECUTION is to descend to a gladiatorial level unmitigated by any prosecutorial obligation for the sake of truth, the government simply cannot avoid responsibility for knowing when the suppression of evidence has come to portent such an effect on a trial's outcome as to destroy confidence in its results
>
> This means, naturally, that a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence. See, Agurs, 427 U.S., at 108, 96 S.Ct., at 2399-2400 ('[T]he prudent prosecutor will resolve doubtful questions in favor of disclosure'). This is as it should be. Such disclosure will serve to justify trust in the prosecutor as 'the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that is shall win a case, but that justice shall be done.' Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935). And it will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations. [Citations omitted.] The prudence of the careful prosecutor should not therefore be discouraged." Kyles v. Whitley, supra, 514 U.S. 419, 439-440.

Contrary to the dictates of Constitutional law, however, California purports to preclude

disclosure of exculpatory evidence contained in a peace officer's personnel file by "declaring" anything more than five years old to be irrelevant.

> "(a) Nothing in this article shall be construed to affect the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of such investigations, concerning an event or transaction in which the peace officer participated, or which he perceived, and pertaining to the manner in which he performed his duties, provided that such information is relevant to the subject matter involved in the pending litigation.
>
> (b) In determining relevance the court shall examine the information in chambers in conformity with Section 915, and shall exclude from disclosure:
>
> (1) Informant consisting of complaints concerning conduct occurring more than five years before the event or transaction which is the subject of the litigation in aid of which discovery or disclosure is sought." (Evid. Code §1045)

The practical effect of this statute is that it precludes a criminal defendant from discovering, and then utilizing in trial, relevant evidence. The material at issue here is kept in a peace officer's personnel file and cannot otherwise be obtained by the defense. The United States Supreme Court has made it clear that the mechanistic application of a state statute to exclude Constitutionally relevant evidence is unconstitutional.

> "No statute can limit the foregoing due process rights of criminal defendants, and the new discovery chapter does not attempt to do so. On the contrary, the new discovery chapter contemplates disclosure *outside* the statutory scheme pursuant to constitutional requirements as enunciated in Brady, supra, 373 U.S. 83, 83 S.Ct. 1194, and its progeny." Izazaga v. Superior Court (1991) 54 Cal.3d 356, 378. (emphasis in original)

This reference, of course, refers to Brady discovery in the context of Penal Code §1054, et. seq., reciprocal discovery. The California Supreme Court's holding that Brady discovery is completely independent of California's mandatory discovery scheme also explains why Brady discovery is completely independent of California's Pitchess discovery scheme.

VI.

LIMITING COMPLAINTS TO THOSE OCCURRING MORE THAN FIVE YEARS BEFORE THE EVENT VIOLATES THE PETITIONER'S DUE PROCESS RIGHTS.

Evidence Code §1045(b)(1) precludes the disclosure of any information consisting of complaints concerning conduct occurring more than five years prior to the incident leading to the arrest in this matter. Such a provision is unconstitutional because it denies the defendant the right to due process.

Brady v. Maryland (1963) 373 U.S. 83 establishes that the defense should be provided evidence that is favorable to the accused and material to either guilt or punishment, including impeachment evidence. While this discovery is similar to so-called Pitchess, Pitchess v. Superior Court (1974) 11 Cal.3d 531, Evidence Code §1043, et. seq. discovery, and indeed the evidence at issues may overlap, the due process rights guaranteed by the U.S. Constitution and explained by Brady cannot be limited or restricted by State law. Izazaga v. Superior Court (1991) 54 Cal.3d 356, 378. To the extent that Evidence Code §1045 limits the discovery under Brady, it is unconstitutional and neither Brady, nor its progeny, limit discovery of exculpatory evidence to the past five years. Accordingly, it is respectfully requested that all relevant personnel records sought pursuant to this motion be disclosed to the defendant, regardless of whether they were generated within the last five years.

Date: November 8, 2011

Respectfully submitted,

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DAVID M. BAUM
Attorney for Defendant
Tamara V.

DECLARATION OF DAVID M. BAUM

IN SUPPORT OF MOTION FOR PRETRIAL DISCOVERY

I, DAVID M. BAUM, declare:

1. That I am an attorney licensed to practice within the State of California and am the attorney of record for the above-named defendant.

2. That I am informed and believe that the Los Angeles Police Department (hereafter "The Department,") make and keep written records of complaints received by The Department and that such records are kept in files maintained by The Department.

3. That I am informed and believe that from time to time persons give statements to The Department concerning officers of The Department, alleging that said officers committed acts indicating or constituting dishonesty; false arrest, illegal search and/or seizure, or the fabrication of charges and/or evidence, or acts involving a "morally lax" character.

4. That I am informed and believe that The Department assign personnel to investigate said complaints. That these personnel correspond with or interview complainants, witnesses, and other persons and make notes, memoranda, and records of conversations in connection with their investigations and prepare and file reports, findings, opinions, and conclusions concerning their investigations. That the Department keep in their personnel record files, or other files, notes, findings, memoranda, recordings, reports, transcripts, opinions, and conclusions of the investigations made and of the disciplinary proceedings commenced as the result of such complaints. That said files contain the names, addresses, and telephone numbers of witnesses interviewed during such investigations and of persons who initiate complaints as are described in the preceding paragraph.

5. That I am informed and believe that the records, data, and materials described in paragraphs (1) through (12) of the Notice of Motion, Points and Authorities, and Order for Pretrial Discovery filed and served herein are in the exclusive possession and control of The Department and/or the Office of Los Angeles County District Attorney, and are readily available to each of them; that said records, data, and materials are not known to either defendant or defense counsel and will not otherwise be made available to defendant or defense counsel.

6. A substantial issue in the trial of this case may be the falsification and fabrication of

charges and/or evidence, false arrest, and illegal search and seizure by the officers involved due to dishonesty and a morally lax character. I am informed and believe that there are numerous inconsistent statements and outright fabrications in the arrest report that call into question the truthfulness, motives, and bias of officers Evans and Munoz. Statements by Officer Evans to Ms. V. indicate Evans' desire to secure a conviction of V. on possession charges. However, the evidence regarding the empty baggies was weak and could have been seen by the officer as insufficient for a conviction, leading to the falsification of the arrest reports in order to bolster the evidence against V.. Additionally, co-defendant Rodriguez stated to V. that there were more pills in Rodriguez's possession than the 30 booked into evidence against Rodriguez.

While the Arrest Report states that a single blue pill was discovered in the defendant wallet, the Report reveals troubling inconsistencies, including the timing of the search of the wallet and discovery of the pill, and the fact that the Officers never so much as mentioned their discovery of the blue pill to Defendant, either contemporaneously at the scene, or during post Miranda interrogation at the police station.

7. The above-listed materials are necessary for the proper preparation of this case for trial. The materials may be used as follows:

(A) To locate and investigate witnesses or other evidence of the dishonest character of the officers involved to show that the officers acted in conformity with that character at the time of this incident;

(B) To locate and investigate witnesses or other evidence of aggressive character of the officers involved to show that the officers acted in conformity with that character at the time of this incident;

(C) To refresh the recollection of witnesses to incidents of fabrication of charges and/or evidence by the officers involved and/or to incidents of the use of illegal or excessive force by the officers so that defense counsel may accurately ascertain the facts and circumstances of those incidents;

(D) To properly prepare for cross-examination and impeachment of witnesses to be called by the prosecution;

(E) To properly assess the credibility of the defendant and defense witnesses; and

(F) To impeach the testimony of the officers involved with acts showing a morally lax character and hence a readiness to lie.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 8, 2011

_____
DAVID M. BAUM
Attorney for Defendant
Tamara V.