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CLERK OF THE SUPERIOR COURT
BY: *[Signature]*

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF STANISLAUS

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 Plaintiffs,

14 v.

15 FRANK CARSON, et al.,

16 Defendant.

) Case No.: 1490969

) DEFENDANT'S MEMORANDUM OF
) POINTS AND AUTHORITIES RE:
) WITNESS INCENTIVES/BENEFITS

) DATE: November 3, 2015
) TIME: 9:30 AM
) DEPT.: 26

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19 INTRODUCTION

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21 This Court will learn during the course of the preliminary hearing regarding prosecution
22 witnesses criminally charged since 2012 of a pattern of dismissal of criminal cases against them,
23 reductions of charges, changes in charging complaints, dropping of strikes and enhancements,
24 ignoring statutory ineligibilities, continuances of cases, and stunningly favorable defendant plea
25 bargains; all that are solely at the discretion of and within the control of the People.

26
27 These considerations and benefits will be shown to be pivotal in securing the statements
28 and testimony being proffered to the Court by the prosecution.

1 This is not a case of hurried work and overlooked inducements made to be witnesses. Far
2 from it, it is born of over 3 ½ years of calculated, painstaking, and orchestrated application and
3 use of governmental favor and power.
4

5 **I.**
6 **DUTY TO DISCLOSE**

7 The duty to disclose benefits and considerations offered to, promised, given, or even
8 discussed, by a party in litigation to witnesses is so fundamental and recognized in America
9 jurisprudence as to be unquestioned and inherently understood. Nonetheless California Evidence
10 Code § 780 codifies the importance and relevance of disclosure of bias, motives, or interests.

11 The landmark case Giglio v. U.S. (1972) 405 US 150, 153, 92 S Ct. 763, makes this point
12 clear; where reversal was required because the prosecution failed to disclose a promise of
13 leniency in exchange for testimony.
14

15 See also Maxwell v. Roe (9th Cir 2010) 628 F3d 486, where reversal was required when
16 prosecutor failed to disclose jailhouse informants agreements with prosecution to reduce his
17 sentence, and his experience as informant.
18

19 **II.**
20 **DISCLOSURES MUST BE TIMELY**

21 It is improper to withhold information about a plea bargain guaranty between the
22 prosecutor and the witness's counsel until after the witness has testified People v. Phillips (1985)
23 41 C3d 29, 48.

24 Also Penal Code § 1127(a) requires a prosecutor to record any benefits promised or
25 delivered to an "in-custody informant" and to disclose that record to the court and criminal
26 defense counsel.
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IV.
ANY "DEAL" IS GOING TO BE CLOSELY EXAMINED

A plea bargain guaranty to obtain and informants testimony is an arrangement that becomes the subject of discovery and proper cross-examination. See *People v. Ruthford* (1975) 14 C3d 399, 405.

There is a witch's brew of deal making and favors being extended to prosecution witnesses. The components that we know of include:

- Charge bargaining which looks to the accusation and the crimes alleged.
- Sentence bargaining involves negotiating the sentence that the defendant will receive.
- Grants of immunity that vaguely blanket any number of offenses and that are asserted as a shield to cross-examination.

Taken together this is a recipe for possibly pressured or perjured testimony given with impunity.

Practically speaking, if for no other reason, the orders sought will save endless hours of cross-examination.

Also please note immunity itself is consideration and benefit to the witness.

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V.
**THE PRODUCTION AND PRESERVATION ORDER SOUGHT FOR
WITNESS NEGOTIATIONS IS NEEDED AND APPROPRIATE**

Weeks into the ongoing preliminary hearing, after the cross-examination of a number of witnesses has made clear troubling problems of proof, it has just been learned that plea deals for testimony are "coming" "expected," "being worked out," etc., for current and future witnesses.

While the timing alone should be a red flag causing suspicion, the fact that the defense has had to ferret out such considerations should be especially troubling to the Court.

It is reasonable to suspect a deal made with a witness to "plug the holes" in the case, and perhaps elicit new "facts" to bolster a prosecution. It's the possibility of negotiating for a

1 statement; that is that until they “get to” a statement preferred by law enforcement there is no
2 plea bargaining, that the defendant’s fear. If the quid pro quo, so to speak, is that the price of the
3 plea bargain is a change or continuation of the statement or testimony sought the defense has a
4 right to know.
5

6 Otherwise a “deal” or “statement” just appears with an asserted veneer of being an
7 immaculate conception; pristine, unsullied, and un-bargained for.

8 The bible of the criminal bar; California Criminal Law, Procedure and Practice (2014)
9 CEB Sec. 26, 46, P.773 states as follows:
10

11 The following general guidelines should be followed by prosecutors (see
12 California District Attorneys Association Uniform Crime Charging Manual):

- 13 • A memorandum of any plea discussion or negotiation should be placed in the file
14 when agreement has been made with defense counsel.

15 The defense in this case wants that “discussion or negotiation”; there should be no reason
16 to hide them or not disclose them.

17 Evidence that a defendant offered to plead guilty is inadmissible by the terms of Evidence
18 Code § 1153 and Penal Code § 1192.4 but the “truth-in-evidence” provision of the California
19 Constitution (Cal. Const. art.1, 28(f)(2)) has been interpreted to allow statements made to a
20 presentence officer in the preparation of a presentence report to be used for impeachment at trial
21 after the guilty plea was withdrawn. *People v. Pacchioli* (1992) 9 CA4TH 1331. The defense
22 wants those statements made during the evolution of the produced agreement.
23

24 CONCLUSION

25 We would remind this court yet again that should an examined witness become
26 unavailable for trial and the People seek to use prior testimony any such effort must fail if
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1 Crawford confrontation has been thwarted and inducements for testimony not made in a timely
2 and sufficient fashion.

3 DATED:

Respectfully submitted,

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6 ROBERT L.FORKNER
7 Attorney for the Defendant,
8 CHRISTINA DEFILIPPO
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1 **PROOF OF SERVICE**

2 **SUPERIOR COURT OF THE**

3 **STATE OF CALIFORNIA**

4 I am a resident of or employed in the County of Stanislaus,
5 State of California at 722 Thirteenth St., Modesto, where the
6 service took place. I am over the age of 18 and not a party to the
7 within action.

8 On 11/3/15 I served the document(s) described as:
9 (DATE)

10 **DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES RE: WITNESS**
11 **INCENTIVES/BENEFITS**

12 on the interested parties in this action by providing a copy
13 thereof to:

14 **STANISLAUS COUNTY DISTRICT ATTORNEY'S OFFICE**

15 _____ (BY MAIL) I am readily familiar with this business's
16 practice for collection and processing of correspondence
17 for mailing, and that correspondence, with postage
18 thereon fully prepaid, will be deposited with the U.S.
19 Postal Service on the date herein above in the ordinary
20 course of business, at Modesto, California.

21 X (BY PERSONAL SERVICE) I caused such envelope to be
22 delivered by hand to the offices of the addressee(s).

23 _____ (BY OVERNIGHT COURIER) I caused the above-referenced
24 envelope(s) to be delivered to an overnight courier
25 service for delivery to the addressee(s).

26 _____ (BY FACSIMILE/E-MAIL) I caused the above-referenced
27 document(s) to be faxed to the offices of the
28 addressee(s).

Executed on 11/3/15 at **MODESTO, California.**

29 X (STATE) I declare under penalty of perjury under the laws
30 of the State of California that the foregoing is true and
31 correct.

32 _____ (FEDERAL) I declare that I am employed in the office of
33 a member of the bar of this court at whose direction the
34 service was made.

35 
36 **ROBERT L. FORKNER**

1 PEOPLE v. CHRISTINA DEFILIPPO

2 Case No.: 1490969

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