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FILED
MAY - 2 2016
CLERK OF THE SUPERIOR COURT
BY *[Signature]*

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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF STANISLAUS**

10
11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,
13
14 V. Plaintiff,
15
16 BALJIT ATHWAL Defendant.

Case Number: 1490969

**MOTION TO STRIKE
/EXCLUDE TESTIMONY OF
BEVERLEY WOODY AS
INADMISSABLE HEARSAY AS
TO DEFENDANT**

Date: TBA
Time: 10:00 a.m.
Dept. 26

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18 **POINTS AND AUTHORITIES**

19
20 The District Attorney introduced the hearsay testimony of Robert Woody through his
21 mother Beverly Ann Woody claiming that the statements of Mr. Woody were admissible as
22 “admissions” and /or “declarations against interest” exceptions to the hearsay rule. (TX
23 7712,7717) The burden is on the proponent of the proffered evidence to show by a
24 preponderance of the evidence that the statement satisfies the requirements of a particular
25 exception to the hearsay rule. (Jefferson on Evidence, section 26.26.) Hearsay objections were
26 made by all defendants, and the court admitted the evidence subject to a motion to strike. (TX
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1 7716,7894). All of the below listed statements in section are inadmissible hearsay against the
2 defendants.

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5 **A. Applicable Evidence Code Sections.**

6 **Evidence Code section 1220.**

7 Evidence of a statement is not made inadmissible by the hearsay rule when offered against the
8 declarant in an action to which he is a party in either his individual or representative capacity,
9 regardless of whether the statement was made in his individual or representative capacity.

10
11 **Evidence Code section 1230**

12 Evidence of a statement by a declarant having sufficient knowledge of the subject is not made
13 inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement,
14 when made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far
15 subjected him to the risk of civil or criminal liability, or so far tended to render invalid a claim
16 by him against another, or created such a risk of making him an object of hatred, ridicule, or
17 social disgrace in the community, that a reasonable man in his position would not have made
18 the statement unless he believed it to be true.
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22 **B. Robert Woody's Statements Are Not Admissible Against Defendants Pursuant To**
23 **Section 1220.**

24 Admissions are hearsay statements made by a party to the action offered only against
25 that party. Such admissions are not admissible against other parties to the action. If Robert
26 Woody were a party to the instant action, admissions made by Robert Woody would be
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1 admissible only against Robert Woody. Further, Robert Woody is not a party to this action. He
2 is not a named defendant in Stanislaus County complaint number 1490969, and his pending
3 case has not been joined to the instant case
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6 **C. Robert Woody's Statements Are Not Admissible As Declarations Against Interest**
7 **Pursuant To Evidence Code Section 1230.**

8 Preliminarily, statements made admissible pursuant to Evidence Code section 1230 are
9 made admissible only if the declarant is unavailable. Robert Woody's statements to his mother
10 are not admissible because the prosecutor has not made any showing that Mr. Woody is
11 unavailable to testify. In fact she has said throughout the preliminary hearing that Mr. Woody
12 would either personally testify or testify through a prop. 115 qualified law enforcement officer.
13

14 Statements or are admissible pursuant to Evidence Code section 1230 only if the
15 declarant is unavailable, and the statements are specifically disserving to the declarant. A
16 statement or any portion of a statement which is neutral or self- serving is not admissible.
17 *People v. Duarte* (2000) 24 Cal.3d 603; *People v. Leach* (1975) 15 Cal.3d 419; *People v.*
18 *Grimes* (California Supreme Court, January 5, 2015). Further, any statement which is on the
19 whole self-serving, even if portions of it are inculpatory to the declarant, does not satisfy the
20 trustworthiness requirement and is not admissible. *People v. Duarte*, supra.
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22 All of Robert Woody's proffered statements allegedly made to his mother are self
23 serving attempts to exculpate himself or minimize his involvement.
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25 *People v. Leach*, supra, is the seminal California case, holding that, while California is
26 one of the few American jurisdiction to have a "declaration against interest" exception to the
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1 hearsay rule, the definition of what constitutes an admissible "declaration against interest" is
2 very narrowly applicable only to a specifically dis-serving statement. In *Leach* the court
3 reversed the conviction of defendant Leach holding that the self-serving, though somewhat
4 inculpatory, statements of two cohorts in an insurance fraud scheme were not admissible as
5 either co-conspirator's statements, or declarations against interest pursuant to Evidence Code
6 section 1230. In so holding, Justice Wright wrote, "In the absence of any legislative
7 declaration to the contrary, we construe the exception to the hearsay rule relating to evidence of
8 declarations against interest set forth in section 1230 of the Evidence Code to be inapplicable to
9 evidence of any statement or portion of a statement not itself specifically dis-serving to the
10 interests of the declarant." In so holding he offered this cogent analysis, which seems
11 particularly apropos in the instant case. "We agree with the cogent comment that "[a]lthough it
12 seems reasonable that no man would state a fact which might cause him to suffer financial loss
13 or imprisonment," it is precisely the purpose of the Constitution -- and, we might add, the
14 hearsay rule -- to "protect defendants from statements of unreasonable men if there is to be no
15 opportunity for cross-examination." (Note, supra, 113 U.Pa.L.Rev. at p. 753.) To paraphrase
16 another commentator, it is no victory for common sense to make a belief that unreasonable men
17 are notorious for their veracity the basis for law. (See Levie, supra, 52 Mich.L.Rev. at p. 1166.)
18 fn. 17 ." (at pg. 442)

19 The limited definition of a declaration against interest as only applying to that portion of
20 a statement that was specifically dis-serving to the declarant in *People v. Leach* was in line with
21 the holding of the Justice O'Connor in *Williamson v. U.S.* (1994) 502 U.S. There the court
22 held that;

1 1. The most faithful reading of Rule 804(b)(3)-which renders admissible "statement[s]
2 which ... so far ten[d] to subject the declarant to ... criminal liability ... that a reasonable
3 person ... would not have made [them] unless believing [them] to be true" -is that it does
4 not allow admission of non-self-inculpatory statements, even if they are made within a
5 broader narrative that is generally self-inculpatory. Although the statutory term
6 "statement" can mean either an extended declaration or a single remark, the principle
7 behind the Rule, so far as it is discernible from the text, points clearly to the narrower
8 reading, so that only those remarks within a confession that are individually self-
9 inculpatory are covered. The Rule is founded on the commonsense notion that reasonable
10 people, even those who are not especially honest, tend not to make self-inculpatory
11 statements unless they believe them to be true. This notion does not extend to a
12 confession's non-self-inculpatory parts-to parts that are actually self-exculpatory, or to
13 collateral statements, even ones that are neutral as to interest. A district court may not just
14 assume that a statement is self-inculpatory because it is part of a fuller confession,
15 especially when the statement implicates someone else. The policy expressed in the
16 Rule's text is clear enough that it outweighs whatever force lies in ambiguous statements
17 contained in the Advisory Committee Notes to the Rule. Pp.598-602.

18 2. The foregoing reading does not eviscerate the against penal interest exception. There
19 are many circumstances in which Rule 804(b)(3)

20 In *People v. Duarte*, supra, the Supreme Court reaffirmed the holding in *Leach* and
21 extended it to exclude even those portions of a statement redacted to reflect only the
22 specifically self-serving portions of the statement when the original statement was on the
23 whole self-serving. The Supreme Court held the statements admitted against the defendant were
24 not admissible as declarations against interest, and reversed the defendant's conviction.

25 In *Duarte* co-participant Morris invoked his Fifth Amendment right not to testify, an
26 invocation the parties stipulated was valid due to his possible prosecution for perjury should he
27 testify. The trial court had denied defendant's motion to exclude any evidence of Morris's post-
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1 arrest statements. The statements had been placed into evidence by an officer, who testified to
2 a redacted version of Morris statements to the officer.

3 The Duarte court reiterated that it is the proponent of such evidence that must show that
4 the declarant is unavailable, that the declaration was against the declarant's penal interest when
5 made and that the declaration was sufficiently reliable to warrant admission despite its hearsay
6 character. (People v. Lucas (1995) 12 Cal. 4th 415, 462 [48 Cal. Rptr. 2d 525, 907 P.2d 373].

7
8 The Duarte court recognized that Morris's statements "indisputably" contained
9 admissions that appear on their face to be contrary to Morris's interest in avoiding criminal
10 liability or punishment, and generally tended to implicate Morris in criminal activity.
11 "Nevertheless, *"the precedents in the hearsay area provide a persuasive reminder that*
12 *declarations against penal interest may contain self-serving and unreliable information"*
13 *and, consequently, "an approach which would find a declarant's statement wholly credible*
14 *solely because it incorporates an admission of criminal culpability is inadequate."* (People v.
15 *Campa* (1984) 36 Cal. 3d 870 , italics in original). Justice Werdegar , "[T]hat a hearsay
16 statement that may be facially inculpatory or neutral cannot always be relied upon to indicate
17 whether it is "truly self-inculpatory, rather than merely [an] attempt[] to shift blame or curry
18 favor." (*Williamson v. United States*, supra, 512 U.S. at p. 603 [114 S.Ct. at p. 2436].) The
19 court continued, "Even a hearsay statement that is facially inculpatory of the declarant may,
20 when considered in context, also be exculpatory or have a net exculpatory effect. (See, e.g.,
21 *People v. Coble* (1976) 65 Cal. App. 3d 187). Ultimately, as the high court has noted, "whether
22 a statement is self-inculpatory or not can only be determined by viewing it in context."
23 (*Williamson v. United States*, supra, at p. 603)". (at pg. 613)

1 Justice Werdegar continued, "We long ago determined that "the hearsay exception
2 should not apply to collateral assertions within declarations against penal interest." (People v.
3 Campa, supra, 36 Cal.3d at p. 882.) In order to " 'protect defendants from statements of
4 unreasonable men if there is to be no opportunity for cross-examination,' " we have declared
5 section 1230's exception to the hearsay rule "inapplicable to evidence of any statement or
6 portion of a statement not itself specifically disserving to the interests of the declarant." (Leach,
7 supra, 15 Cal.3d at p. 441, fn. omitted; accord, People v. Shipe (1975) 49 Cal. App. 3d 343, 354
8 ["a declaration against penal interest must be 'distinctly' against the declarant's penal interest"].)
9 Under the rule of Leach, a hearsay statement "which is in part inculpatory and in part
10 exculpatory (e.g., one which admits some complicity but places the major responsibility on
11 others) does not meet the test of trustworthiness and is thus inadmissible into evidence against
12 defendant." (at pg. 614)

13 The Duarte Court then address the question of sufficient indicia of trustworthiness for
14 admissibility of a declaration against interest; "While redaction, when properly employed, can
15 help ensure that only the "specifically disserving" (Leach, supra, 15 Cal.3d at p. 441) and,
16 hence, most reliable, portions of a particular hearsay declaration are actually admitted into
17 evidence, redaction cannot enhance the underlying or general trustworthiness of a declaration
18 as a whole. By its nature an after-the-fact process employed with respect to a previously
19 existing declaration, redaction as a logical matter simply cannot bear on, let alone alter, the
20 declarant's motives or any other circumstance that might affect a given declaration's
21 fundamental reliability and inform a court's assessment thereof." Thus, the Court held, "even
22 when a hearsay statement runs generally against the declarant's penal interest and redaction has
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1 excised exculpatory portions, the statement may, in light of circumstances, lack sufficient
2 indicia of trustworthiness to qualify for admission. (See *People v. Shipe*, supra, 49 Cal.App.3d
3 at p. 354 [to satisfy the requirements of § 1230, a declaration must be distinctly against the
4 declarant's penal interest "and must be clothed with indicia of reliability"]; see generally 1
5 Witkin, Cal. Evidence (4th ed. 2000) Hearsay, §§ 150, 151, pp. 861-864 [same].)"

7 The test to determine whether a particular declaration against penal interest passes
8 [section 1230's] required threshold of trustworthiness, 'may take into account not just the words
9 but the circumstances under which they were uttered, the possible motivation of the declarant,
10 and the declarant's relationship to the defendant.' " (*People v. Cudjo* (1993) 6 Cal. 4th 585, 607)
11 "[A]ssessing trustworthiness " 'requires the court to apply to the peculiar facts of the individual
12 case a broad and deep acquaintance with the ways human beings actually conduct themselves
13 in the circumstances material under the exception.' " (*People v. Frierson* (1991) 53 Cal. 3d 730,
14 745) Justice Werdegar rejected the People's argument that, "Morris's statements that he did
15 not want to kill or hurt anyone "do not, upon initial review, appear disserving", but demonstrate
16 "Morris was attempting to explain his criminal action and are disserving to the extent they
17 acknowledge he was involved in the criminal act." The court responded, "Perhaps so, but such
18 would be true of any attempt to "shift blame" (*Williamson v. United States*, supra, 512 U.S. at
19 p. 603 [114 S.Ct. at p. 2436]) without completely denying involvement." The *Duarte* court
20 held, "Courts applying section 1230 to determine the basic trustworthiness of a proffered
21 declaration are, rather, to "consider all the surrounding circumstances to determine if a
22 reasonable person in [the declarant's] position would have made the statements if they weren't
23 true." (*People v. Rios* (1985) 163 Cal. App. 3d 852, 867). (at pg. 614, 615)
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1 “The question under the Rule is always whether the statement at issue was sufficiently against
2 the declarant's penal interest under the Rule's language, and this question can only be answered
3 in light of all the surrounding circumstances.”
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5 Robert Woody's alleged statements to his mother are not only self-serving, but lack any
6 indicia of trustworthiness. At each turn, according to his mother, Woody denied he had prior
7 knowledge, claimed he had not participated in anyway in the alleged killing, and claimed that
8 his acts as an accessory were due to threats and duress. The Court will recall that the statement
9 Robert Woody made to Miranda Dykes on the wire in February 2014, was that he had killed
10 Korey Kauffmann by himself and without any help, and had fed the body to the pigs, saving
11 only the teeth. The Court will also recall that the first time anyone every heard Beverly
12 Woody's recital of the alleged statements, was in front of this Court beginning April 18, 2016.
13 The statements proffered through Beverley Woody, a felon and admitted liar, are self-serving,
14 self aggrandizing, and meant vitiate the damaging confession made to Miranda Dykes. The
15 statements are self-serving, not specifically disserving and clad in indicia of unreliability and
16 untrustworthiness.
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20 **D. Hearsay Statements**

21 Based on the above principles and applicable case law defendant moves to exclude the
22 following testimony of Beverly Woody. The following cites frequently include the questions
23 asked as calling for improper hearsay and giving context to the witness' testimony;
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26 7710	9-14, 18-20
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2	7722	6-13
3	7723	1-13, 25-28
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7	7727	14-28
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9	7729	19-28
10	7730	1-11
11	7731	1-18
12	7732	4-10, 16-18
13	7733	9-27
14	7734	6-20
15	7735	1-8, 10-27
16	7736	3-5
17	7737	1-3, 12, 20-26
18	7738	4-6, 10-20
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1	7743	18-287745	15-22
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5	7753	6-12	
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7	7755	1-8, 18-28	
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10	7760	6, 26	
11	7761	6-26	
12	7762	2,8, 18, 21 26-27	
13	7763	1-28	
14	7764	1-10, 17-26	
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19	7768	2,10,21,26	
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21	7787	14-17	
22	7802	3-28	
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1	7807	11-17
2	7822	11-28
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8	7906	8-11
9	7908	3-5, 8-13
10	7910	13-23
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14	7921	1-4
15	7924	1-8
16	7925	15-18
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8	7966	1, 15-18, 19-22
9	7967	1-28
10	7968	1-15
11	7972	19-23
12	7973	1-15
13	7974	18-20
14	7975	13-16
15	7976	9-12, 25-28
16	7977	1-28
17	8009	6-8
18	8011	26-28
19	8012	1-9
20	8035	6,9-10,12
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3	8112	1-28
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6	8117	5-10, 17-19, 23-24
7	8118	5-8
8	8119	15-28
9	8120	7-13
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16	8245	27
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Dated: April 30, 2016

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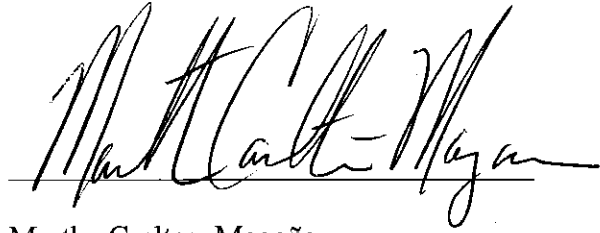
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PROOF OF SERVICE

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6 I am a citizen of the United States and am employed in the Stanislaus County; I am over
7 the age of eighteen (18) years and not a party to the within action; my business address is 1012
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9 On April 30, 2016I served the following document(s): PEOPLE v. BALJIT ATHWAL
10 SSCN 1490969;Motion to Strike/Exclude Testimony Of Beverly Woody .. and served in the
11 manner and/or manners described below to each of the parties herein, addressed as stated
12 below:

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12 By mail, or electronically if available, or at the Attorney Box
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14 800 11th St. Modesto, California 95354

15 I caused such envelope(s) to be delivered by hand to the address(s) listed above, the attorney
16 box, or electronically.

17 I declare under penalty of perjury, under the laws of the State of California, that the
18 Foregoing is true and correct.

19 Executed at Modesto, California, on ~~April~~ ^{MAY 2} 2016

20 
21 Martina Carlton- Magaña
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