

**ORIGINAL**

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8 Attorney for Defendant,  
9 FRANK C. CARSON

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF STANISLAUS

12 THE PEOPLE OF THE STATE )  
13 OF CALIFORNIA, )  
14 )  
15 Plaintiff, )  
16 )  
17 vs. )  
18 )  
19 FRANK C. CARSON, et al., )  
20 )  
21 )  
22 Defendant. )

23 CASE NO. 1490969  
24 )  
25 MOTION TO COMPEL DISCOVERY  
26 )  
27 Date: TBA  
28 Time: 9:30 a.m.  
Dept: 26

STATEMENT OF THE CASE

Defendants have made numerous informal requests for discovery. The attached letter brief details the requested items of discovery that have not been provided.

Defendant submits the following points and authorities in support of the motion for discovery:

I.

THE PROSECUTION HAS A DUTY TO SEEK OUT DISCOVERABLE MATERIAL THAT IS READILY ACCESSIBLE

1 Pen. Code, §1054.1 reads in part: "The prosecution shall  
2 disclose . . . materials and information, if it is in the  
3 possession of the prosecuting attorney or if the prosecuting  
4 attorney knows it to be in the possession of the investigating  
5 agencies."

6 Our Supreme Court has placed a much greater burden on the  
7 prosecution than just producing evidence that is in its actual  
8 possession. The court in In re Littlefield, 5 Cal. 4th 122,  
9 135, 19 Cal. Rptr. 2d 248, 851 P.2d 42 (1993) restated the  
10 prosecutor's burden: "California courts long have interpreted  
11 the prosecutorial obligation to disclose relevant materials in  
12 the possession of the prosecution to include information  
13 'within the possession or control' of the prosecution." In  
14 Pitchess v. Superior Court, 11 Cal. 3d 531, 113 Cal. Rptr. 897,  
15 522 P.2d 305 (1974), the court construed the scope of  
16 prosecutorial "possession and control" as encompassing  
17 information "reasonably accessible" to the prosecution.  
18 "We find no basis for [assuming] that, by designating  
19 discoverable information under . . . 1054.1 as that 'in the  
20 possession' of the prosecution or its . . . agencies,  
21 Proposition 115 was intended to abrogate this prior rule  
22 precluding the prosecution from withholding information that is  
23 'reasonably accessible' to it" (In re Littlefield, 5 Cal. 4th  
24 122, 135, 19 Cal. Rptr. 2d 248, 851 P.2d 42 (1993)).  
25 A broader duty also arises from the United States Constitution.  
26 The Supreme Court has held that "the . . . prosecutor has a  
27 duty to learn of any favorable evidence known to the others  
28

1 acting on the government's behalf in the case, including the  
2 police" (Kyles v. Whitley, 514 U.S. 419, 437, 115 S. Ct. 1555,  
3 131 L. Ed. 2d 490 (1995); see also Strickler v. Greene, 527  
4 U.S. 263, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999)).

5 II.

6 THE PROSECUTION HAS A DUTY TO IMMEDIATELY PROVIDE DISCOVERY ONCE  
7 IT OBTAINS THE INFORMATION

8 The prosecution's duty to provide discovery to the defense  
9 applies as soon as the prosecution obtains the information. The  
10 California Supreme Court has ruled that the prosecution  
11 violates its duty under Pen. Code, §1054.1 of the reciprocal-  
12 discovery statutes, when it fails "immediately [to] disclose"  
13 discoverable material that comes into its possession (People v.  
14 Verdugo, 50 Cal. 4th 263, 284, 113 Cal. Rptr. 3d 803, 236 P.3d  
15 1035 (2010) (prosecution violates its duty under Pen. Code,  
16 §1054.1 when it fails "immediately [to] disclose" interview  
17 notes of a witness obtained one week earlier)).

18  
19 III.

20 DUE PROCESS MANDATES DISCLOSURE OF EVIDENCE THAT IS FAVORABLE  
21 TO THE DEFENDANT

22 In the landmark case of Brady v. Maryland, 373 U.S. 83,  
23 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), the United States  
24 Supreme Court held that the suppression of material evidence  
25 favorable to the defendant violates the guarantees of due  
26 process.  
27  
28

1 We now hold that the suppression by the prosecution of  
2 evidence favorable to an accused upon request violates due  
3 process, where the evidence is material either to guilt or to  
4 punishment, irrespective of the good faith or bad faith of the  
5 prosecution.

6 In Giglio v. U.S., 405 U.S. 150, 154, 92 S. Ct. 763, 31 L.  
7 Ed. 2d 104 (1972) the United States Supreme Court held that  
8 evidence that affects the credibility of a witness whose  
9 testimony might impact upon the defendant's guilt or innocence  
10 falls within the Brady rule of compelled disclosure. Giglio was  
11 reaffirmed in U.S. v. Bagley, 473 U.S. 667, 676, 105 S. Ct.  
12 3375, 87 L. Ed. 2d 481 (1985): "Impeachment evidence, however,  
13 as well as exculpatory evidence, falls within the Brady rule  
14 [citation]. Such evidence is 'evidence favorable to an accused'  
15 [citation]."

16 An affirmative duty arises when law enforcement (or the  
17 prosecutor) has reason to believe exculpatory evidence exists.  
18 "[A] bad faith failure to collect potentially exculpatory  
19 evidence would violate the due process clause [in] cases in  
20 which the police . . . by their conduct indicate . . . the  
21 evidence could form the basis for exonerating the defendant"  
22 (Miller v. Vasquez, 868 F.2d 1116, 1120-1121 (9th Cir. 1989);  
23 see also People v. Velasco, 194 Cal. App. 4th 1258, 1264-1265,  
24 124 Cal. Rptr. 3d 238 (6th Dist. 2011)).

25  
26 IV.

27 CALIFORNIA STATUTORY DISCOVERY OBLIGATIONS ARE BROADER THAN  
28 THE CONSTITUTIONAL REQUIREMENTS OF DUE PROCESS AND DO NOT  
REQUIRE A SHOWING OF MATERIALITY

1 A claim of non disclosure under Brady differs from a  
2 request for Brady material in discovery. "There are three  
3 components of a true Brady violation: The evidence at issue  
4 must be favorable to the accused, either . . . exculpatory, or  
5 . . . impeaching; that evidence must have been suppressed by  
6 the State, either willfully or inadvertently; and prejudice  
7 must have ensued" (Strickler v. Greene, 527 U.S. 263, 281-282,  
8 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999)).

9 However, Pen. Code, §1054.1(e), compels the prosecution to  
10 disclose "[a]ny exculpatory evidence." This statutory  
11 requirement is both different and broader than what is required  
12 under the United States Constitution to establish a due process  
13 violation for non disclosure under Brady. Our appellate courts  
14 have held this statutory language requires the prosecution to  
15 disclose "[a]ny exculpatory evidence," not just material  
16 exculpatory evidence.

17 "Penal Code section 1054.1(e), requires the prosecution to  
18 disclose '[a]ny exculpatory evidence,' not just material  
19 exculpatory evidence.

20 V.

21 THE DEFENDANT NEED NOT ESTABLISH THAT THE  
22 REQUESTED INFORMATION WILL BE ADMISSIBLE

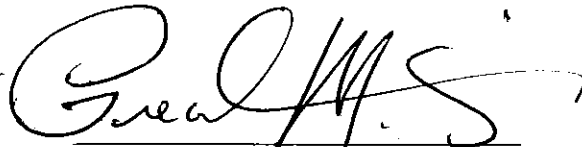
23  
24 The defense is entitled to the discovery of relevant  
25 information and need not establish its admissibility (Pierre C.  
26 v. Superior Court, 159 Cal. App. 3d 1120, 1122-1123, 206 Cal.  
27 Rptr. 82 (1st Dist. 1984)). In order to be discoverable, the  
28 defendant need not show that the evidence sought to be produced

1 would be admissible at trial, but only that it may reasonably  
2 lead to admissible evidence (People v. Cooper, 53 Cal. 2d 755,  
3 770, 3 Cal. Rptr. 148, 349 P.2d 964 (1960)).

4 Defendant, Frank C. Carson, respectfully requests the court  
5 to compel all of the items listed in the attached letter brief.  
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7  
8 DATED: March 14, 2016

Respectfully Submitted,

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12 PRECILIANO MARTINEZ  
13 ATTORNEY AT LAW  
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11 IN AND FOR THE COUNTY OF STANISLAUS

12 PEOPLE OF THE STATE OF  
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Defendants.

CASE NO.: 1490969

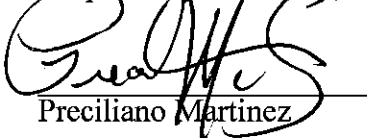
DEFENDANT'S SUPPLEMENTAL  
OUTLINE BRIEF RE: RELEVANCE  
OF DISCOVERY DEMANDED

Date: TBA  
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1. Hampton's letters to law enforcement. Impeachment. Couldn't recall if letters sent previous. P. 3965; 22-3, P. 3966; 1-3, "a letter" sent previous occasion P. 4034; 1-17, P. 4050; 10-20.
2. Prior providing of information to cops. Impeachment. Credibility. First denied having done so. P. 3875; 22-24, P. 3895; 1-2. Doesn't recall. P. 3895; 3-8. Has provided. P. 3895; 28, 3896; 1-28, 3987; 1-3, 3963-65, 3974; 19-28, 3975; 1-15, 3976, 4044; 13-28, 4045; 1-2. By own admission information on Dizney. CDC records: Utter. See also interview transcript.
3. 4. 5. Honesty and providing information to cops. Impeachment. Credibility. Previous cites above. Also, P. 3967; 1-13. Misconduct Motion.
6. E-mails, etc. Not work product. Impeachment. Murgia motion, recusal motion, bias, motive, interest.
7. Crime Stopper Tips, etc. Brady. Exculpatory.
8. Finances, Costs spent. Impeachment of witnesses. Recusal motion. Bias, motive, interest.
9. Confidential witnesses. Brady exculpatory. Impeachment. Recusal.
10. Prior informant information on Cooley, Keyes, Cooper. Impeachment. Misconduct motion.
11. Gang information on Cooley, Cooper, Hampton. Impeachment Exculpatory.

- 1 12. F.I Cards- Impeachment. Exculpatory.
- 2 13. Investigating Audience/Press. Recusal motion. Murgia motion. Misconduct motion
- 3 14. Voice Stress Tests. Impeachment of Keyes/Cooley. Misconduct motion.
- 4 15. Surveillance Tapes/Records. Exculpatory. Alternative causation or culprits. Alibi  
5 presence. Also due process notice if inculpatory on Woody, etc.
- 6 16. Photos taken. Same as 15. Also recusal motion and bias, motive, interest. Photos were  
7 taken for example of Atwals putting up Carson campaign signs.
- 8 17. Recorded phone calls. Due process notice. Impeachment. Exculpatory.
- 9 18. Surveillance Tapes/Records Carson Properties. Exculpatory. No removal of pipes,  
10 association with co-defendants.
- 11 19. Tracking. Due process notice. Exculpatory. Lack of association with co-defendant.
- 12 20. Tracking on prosecution witnesses. Impeachment. Exculpatory. Bias, motive, interest.
- 13 21. Cooley/Keyes Lander Ave. Searches Impeachment. Exculpatory.
- 14 22. Body sniffing dogs. Exculpatory. Impeachment.
- 15 23. Finances/costs. Recusal motion. Bias, motive, interests.
- 16 24. Courtroom recording. Misconduct motion. Recusal motion. Exculpatory.
- 17 25. Letters to Judiciary, etc. Recusal motion. Bias, motion, interest. Misconduct motion.
- 18 26. 2014 Ramey Warrants. Due process notice. Exculpatory. Prior theory of culpability.  
19 Impeachment. Recusal motion.
- 20 27. Actual accident records. Recusal motion. Police misconduct. Bias, motive, interest.
- 21 28. Count IV. Due process notice. No discovery has been provided. See separate brief  
22 opposing tax records.

23 Respectfully submitted,

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25 Preciliano Martinez  
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