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4 Attorney for the Plaintiff

FILED

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

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11 THE PEOPLE OF THE STATE OF CALIFORNIA, ) CASE NO.: 1490969

12 Plaintiff, )

13 vs. )

14 FRANK CLIFFORD CARSON, )  
15 BALJIT ATWAL, )  
16 DALJIT ATWAL, )  
17 WALTER WESTLEY WELLS, )  
18 GEORGIA DEFILIPPO, )  
CHRISTINA DEFILIPPO, )  
EDUARDO QUINTANAR, and )  
SCOTT MCFARLANE, )

19 Defendants. )

Date: \_\_\_\_\_, 2015

Time: \_\_\_\_\_ a.m.

Dept: 26

The Honorable Barbara Zúfiga

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21 Comes now the People of the State of California, by and through their attorney, BIRGIT  
22 FLADAGER, Stanislaus County District Attorney, MARLISA FERREIRA, Chief Deputy  
23 District Attorney, and respectfully submits the following memorandum of points and authorities  
24 in response to the defendant's memorandum of points and authorities regarding witness  
25 incentives and benefits.

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1 would not be different merely because the defense had additional information about any plea  
2 deals. Therefore, there is no prejudice, without which there can be *Brady* violation.

3 **II.**

4 **THE PROSECUTION'S ONLY DUTY UNDER *BRADY* IS TO DISCLOSE ANY**  
5 **BENEFIT PROMISED.**

6 The defense cites *Giglio v. U.S.* (1972) 405 U.S. 150 in support of its argument.  
7 However, in *Giglio*, the Supreme Court found a *Brady* violation for the failure to disclose that a  
8 prosecution witness had been told he “would definitely be prosecuted if he did not testify and  
9 that if he did testify he would be obliged to rely on the ‘good judgment and conscience of the  
10 Government’ as to whether he would be prosecuted.” (*Id.* at p. 153; fn. omitted; underline  
11 added.) The *Giglio* court explained:

12 [T]he government’s case depended almost entirely on Taliento’s testimony;  
13 without it there could have been no indictment and no evidence to carry the case  
14 to the jury. Taliento’s credibility as a witness was therefore an important issue  
15 in the case, and evidence of any understanding or agreement as to a future  
16 prosecution would be relevant to his credibility and the jury was entitled to  
17 know it.

18 (*Id.* at pp. 154-155.)

19 Nowhere did the *Giglio* court state that the understanding as to a future prosecution need  
20 have been reduced to a writing, only that the promise should have been disclosed.

21 Here, in contrast, the prosecutor has disclosed the open cases of the witnesses testifying  
22 at the preliminary hearing as well as their prior convictions, if any. The witnesses may hope to  
23 receive a benefit from their testimony, but no promises have been made. The court and defense  
24 counsel have already witnessed Michael Cooley, Eula Keyes and Sabrina Romero being granted  
25 the benefit of immunity from prosecution for their testimony pursuant to Penal Code section  
26 1324. Further, all audio recordings of witness interviews in which implied promises may or  
27 may not have been made have been disclosed and are further outlined in Exhibit A.  
28 Accordingly, the defense may cross-examine the witnesses to show their bias and the magistrate  
may assign the proper weight to their testimony in view of their motivation to assist the  
government.

1 CONCLUSION

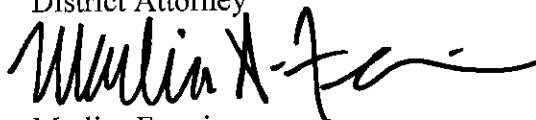
2 “Although *Brady* disclosure issues may arise in advance of, during, or after trial, the test  
3 is always the same. *Brady* materiality is a constitutional standard required to ensure that  
4 nondisclosure will not result in the denial of defendant’s [due process] right to a fair trial.”  
5 (*City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 8; internal quotations and citations  
6 omitted.)

7 Here, there can be no denial of the defendant’s due process right to a fair trial. First, the  
8 prosecutor has made the required disclosures. Second, the witnesses have been cross-examined  
9 as to whether they have been offered a benefit for their testimony. Third, the magistrate will  
10 assign the proper weight to the witnesses’ testimony in view of their hope of receiving leniency  
11 from the government.

12 Dated this 4<sup>th</sup> day of November, 2015, at Modesto, California.

13 Respectfully submitted,

14 BIRGIT FLADAGER  
15 District Attorney

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17 Marlisa Ferreira  
18 Chief Deputy District Attorney

19 MAF/BC/bc  
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## EXHIBIT A

The police reports in all of the following cases have been previously discovered.

1471110	<b>Robert Woody</b>	Plea for less than 187, possibly vol. mansl.
1471029	<b>Michael Cooley</b>	No prison
1471029	<b>Eula Keyes</b>	Plea to possession
1471343	<b>Johnny Padilla</b>	Pled to 11350 & admitted strike;12022.1 & 667.5 stricken
TPD 011500753	<b>Keith Hobbs</b>	Attempted to put Mr. Hobbs in rehab.
1474530	<b>Miranda Dykes</b>	CAL WRAP program for 2 days (TPD case)
1489331	<b>Ronald Cooper</b>	No deals for testimony.
1403502	<b>Patrick Hampton</b>	No deals for testimony.

**PROOF OF SERVICE BY ELECTRONIC MAIL AND FACSIMILE**

STATE OF CALIFORNIA            )  
COUNTY OF STANISLAUS        )

I, the undersigned, declare as follows:

That I am over the age of 18 years and am not a party to this action and I am employed by the Stanislaus County District Attorney's Office, 832 12th Street, Suite 300, Modesto, California.


That I served a copy of the **People's Response to Memorandum of Points & Authorities Re Witness Incentives/Benefits** on November 4, 2015 pursuant to California Code of Civil Procedure section 1010.6(a)(6) by electronically sending a copy thereof to the offices of Timothy Rien at [rienlaw@sbcglobal.net](mailto:rienlaw@sbcglobal.net), Martha Carlton-Magana at [carltnm@hotmail.com](mailto:carltnm@hotmail.com), Preciliano Martinez at [attymartinezp@yahoo.com](mailto:attymartinezp@yahoo.com), Hans Hjertonsson at [Hans.hjertonsson@gmail.com](mailto:Hans.hjertonsson@gmail.com), Alonzo Gradford at [gradfordlaw@gmail.com](mailto:gradfordlaw@gmail.com), Lawrence Niermeyer at [lniermeyer@aol.com](mailto:lniermeyer@aol.com), Robert Lee Forkner at [RLFCrimLaw@aol.com](mailto:RLFCrimLaw@aol.com), Bruce Perry at [brucerperry@msn.com](mailto:brucerperry@msn.com) and Stephanie Mitchell at [stephanie.mitchell@stanct.org](mailto:stephanie.mitchell@stanct.org).

That I served a copy of the **People's Response to Memorandum of Points & Authorities Re Witness Incentives/Benefits** on November 4, 2015 via facsimile to Jesse Garcia at the number of (510) 887-0646 on November 4, 2015. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

That I placed a hard copy of the **People's Response to Memorandum of Points & Authorities Re Witness Incentives/Benefits** in the box assigned to each attorney located at the District Attorney's Office at 832 12<sup>th</sup> Street, Suite 300, Modesto, California.

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

Executed this 4th day of November 2015, at Modesto, California.

  
Declarant

Case No. 140969  
People v. Carson et al.  
Dept. 26

TRANSMISSION VERIFICATION REPORT

TIME : 11/04/2015 16:06  
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Annette Rccs

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FAX TRANSMITTAL

Date: 11/4/2015

Time: 4:02 pm

To: Jesse Garcia

Fax: 510-887-0646

Phone:

Re: Case No. 1490969 // People's Response to Memorandum of Points and Authorities Re  
Witness Incentives/Benefits

Sender: V. Vasquez

Phone 209-525-5524

YOU SHOULD RECEIVE 7 PAGE(S), INCLUDING THIS COVER SHEET.  
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 209-525-5550.

Comments:

Good Afternoon,  
Please find attached the People's Response to Memorandum of Points and Authorities Re Witness  
Incentives/Benefits.  
Thank you,  
Victoria Vasquez