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Attorney for Defendant

6 LIDELFONSO CHAIDEZ

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# SUPERIOR COURT OF THE STATE OF CALIFORNIA

1. **FOR THE COUNTY OF LOS ANGELES**

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PEOPLE OF THE STATE OF

1. CALIFORNIA,
2. Plaintiff,
3. v.
4. LIDELFONSO CHAIDEZ,
5. Defendant. 16

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) Case No.: BA402561

)

# ) NOTICE OF MOTION AND

) **MOTION FOR DISCLOSURE**

) **AND DISCOVERY RE:**

) **INFORMANTS;**

) **MEMORANDUM OF POINTS**

) **AND AUTHORITIES IN**

) **SUPPORT THEREOF;**

) **DECLARATION OF VICTOR**

) **SHERMAN; EXHIBIT**

)

) DATE: September 26, 2013

) TIME: 9:00 a.m.

) PLACE: Department 130

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TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE PEOPLE

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OF THE STATE OF CALIFORNIA AND THEIR ATTORNEYS OF RECORD:

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PLEASE TAKE NOTICE that on September 26, 2013 at 9:00 a.m., or as

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soon thereafter as counsel may be heard, in Department 130 of the above-entitled

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court, defendant, Lidelfonso Chaidez, will, and hereby does, move the Court for an

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order compelling the People to disclose to him:

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* 1. The names and addresses of all informants who are material witnesses or

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whose testimony is crucial to the defense. Roviaro v. United States, 353

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U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957). As to these individuals, the

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MOTION FOR DISCLOSURE AND DISCOVERY RE: INFORMANTS

1. defendants additionally request the following information: date of birth; all
2. aliases, AKAs or pseudonyms; occupation; employment address; any
3. charges presently pending against them, including the name of the court,
4. case number, status of case, charges, investigating agency, witnesses, and
5. any promises or representations made to any informant, or confidential
6. source the People intend to call as a witness, including, but not limited to,
7. promises of promotion, reward, no prosecution, immunity, lesser sentence,
8. leniency or favorable treatment by any state, federal, foreign or local
9. agency.
10. b. All information that could be used to impeach the People’s witnesses in
11. its case-in-chief or on rebuttal. Giglio v. United States, 405 U.S. 150, 154- 12 55 (1972); In re Ferguson (1971) 5 Cal. 3d 525, 535; Paradis v. Arave, 240 13 F.3d 1169, 1179 (9th Cir. 2001); United States v. Kojayan, 8 F.3d 1315,

14 1322-23 (9th Cir. 1993). See Kyles v. Whitley, 514 U.S. 419, 437 (1995);

1. United States v. Wood, 57 F.3d 733, 737 (9th Cir. 1995).
2. c. The conviction records of all prosecution witnesses. Cal. Rule Evid. 17 788; People v. Wheeler, 4 Cal.4th 284, 295-96 (1992).
3. d. A list of all investigations and/or prosecutions in which any witness in
4. this case has assisted in or provided information to the government.
5. e. Without limitation on the discovery of other informants or percipient
6. witnesses, defendants further seek to know on what basis the informant
7. could be considered reliable, what was the informant’s source of
8. knowledge, and whether any attempt was made to corroborate the
9. informant’s tip. Illinois v. Gates, 462 U.S. 213, 238 (1983); Alabama v.

25 White, 496 U.S. 325, 328 (1990); Florida v. J.L., 529 U.S. 266, 269 (2000);

1. United States v. Meling, 47 F.3d 1546, 1555 (9th Cir. 1995).
2. The above discovery requests are made without prejudice to any other rights
   1. of constitutional or statutory rights of disclosure that defendants may have,
   2. including those pursuant to Brady v. Maryland, 373 U.S. 83 (1963).
   3. DATED: September 4, 2013 Respectfully submitte
   4. SHERMAN & SHERMAN

A Professional Law Corporation

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1. By:

VICTOR SHERMAN

1. Attorney for Defendant
2. LIDELFONSO CHAIDEZ

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# MEMORANDUM OF POINTS AND AUTHORITIES

1. **I.**
2. **INTRODUCTION**
3. Lidelfonso Chaidez is charged with narcotics offenses based in part on
4. seizures from three locations on September 12, 2012. Exhibit. Because the entire
5. probable cause portion of the affidavit is sealed, all that Mr. Chaidez can derive
6. from face of the warrant is that there allegedly was an informant and that the
7. affidavit was sealed to protect the informant’s identity. According to the sworn
8. statement of Detective Mario Garcia of the Costa Mesa Police Department, if any
9. of the allegations of probable cause were made public, “they would reveal or tend
10. to reveal the identity of any confidential informant(s).” Id. (Hobbs Attachment).
11. Considering that all of the information concerning probable cause in the warrant
12. affidavit would allegedly lead back to one or more informants, it can only be
13. inferred that the nexus between the places that were searched and evidence of a
14. crime was supplied entirely by an informant or informants.
15. Whether that informant also had specific information concerning Mr.
16. Chaidez is unknown. The warrant states only a magistrate found, based on the
17. representations of affiant Garcia, that there is probable cause to believe that
18. property at that location was used as the means of committing a felony, tends to
19. show that a felony was committed, or was possessed with the intent to commit a
20. public offense. Id.; Penal Code § 1524 [paraphrased].
21. All of the narcotics in this case were recovered from searches other than at
22. the residence at 7226 Cortland Avenue, Paramount, California, where Mr. Chaidez
23. lived. Exhibit. While identification for Mr. Chaidez was found at the Cortland
24. residence, no personal items relating to Mr. Chaidez were found at the residences
25. where narcotics were seized. Although the warrant affidavit purports to rely
26. entirely on information provided by an informant or informants, it is unknown 28

MOTION FOR DISCLOSURE AND DISCOVERY RE: INFORMANTS

* 1. whether this informant gave any alleged evidence that was specific to Mr.
  2. Chaidez.
  3. It can be implied from the Hobbs attachment that Officer Garcia alleged that
  4. he was aware of at least one witness who possessed sufficient information
  5. concerning the Cortland residence to provide probable cause for the search. The
  6. identity of any such informant has not been made available to Mr. Chaidez and the
  7. entirety of the information that such an informant may have possessed has been
  8. suppressed on the ground that its disclosure would also tend to identify the
  9. witness. Whether any such source is or claims to be percipient witnesses to the
  10. activities of Mr. Chaidez and whether such a source might claim to have heard
  11. admissions that could be used against him is shrouded in governmental secrecy.
  12. At present, the information and investigation leading to the search has been
  13. completely suppressed.
  14. Assuming that any such witness or witnesses purport to have been closely
  15. associated or involved in criminal activities with Mr. Chaidez or with another
  16. resident at the Cortland Avenue address, he, she or they may likely be able to
  17. provide exculpatory information. Considering that the evidence seized at Cortland
  18. Avenue merely shows Mr. Chaidez’ mere propinquity to the seized narcotics, the
  19. People may have no choice but to rely on their informant as a witness against
  20. defendants. If it is either the case that a cooperating witness possesses exculpatory
  21. evidence or is a necessary witness, there is no reason why the defendants should
  22. not now be provided with his or her identity in order to protect their rights to
  23. adequately prepare for cross examination, determine whether the witness has
  24. information that may be helpful to their defenses, and assess if the testimony could
  25. implicate their right not to be incriminated by the out of court statements of
  26. codefendants. Bruton v. United States, 391 U.S. 123 (1968). Should the court
  27. determine that any informants are percipient witnesses to the defendants’ alleged

1. criminal activities or that any may be called as witnesses, Mr. Chaidez is moving
2. for the disclosure of the informants identities and other relevant information that

3 may be critical to his defense.

# II.

1. **ARGUMENT**
2. **A. The Public's Interest In Protecting A Source Of Information Must**
3. **Yield When An Informant Is A Material Government Witness Or Has**
4. **Information Helpful To The Defense**
5. The declaration and order sealing the affidavit refers to at least one
6. confidential source of information, informant and/or cooperating defendant.
7. Exhibit (Hobbs Attachment).
8. As to all informants or cooperating witnesses the People intend to call at
9. trial, a sufficient showing of materiality is established by the People’s asserted
10. intention to call the witness. Roviaro v. United States, 353 U.S. 53, 64-65 (1957);
11. United States v. Price, 783 F.2d 1132, 1139 (4th Cir. 1986) (disclosure required);
12. Norton v. Superior Court, 173 Cal. App. 2d 133 (1959); Smith v. Illinois, 390 U.S.
13. 129 (1968); People v. Brandow, 21 Cal. App. 660 (1970); Alford v. United States,
14. 282 U.S. 687 (1972); Miller v. Superior Court, 99 Cal. App. 3d 381 (1979). It is
15. thus imperative that the People provide the defense with its witness list and
16. disclose whether they intend to call any of the cooperating sources of information
17. as witnesses.
18. An informant called as a prosecution witness must disclose his or her name
19. and address, particularly where his or her credibility is at issue. See Smith v.
20. Illinois, 390 U.S. 129, 131 (1968) (cross-examination of informant regarding name
21. and address is essential to challenging credibility).
22. Alternatively, the defense is entitled discover the identities of informants
23. whenever the informant's testimony may be relevant and helpful to the defense.
24. United States v. Feldewerth, 982 F.2d 322, 324 (8th Cir. 1993) (abuse of discretion
25. to withhold informant's identity); Roviaro, 353 U.S. 53. The "relevant and
26. helpful" language of Roviaro has been interpreted to require disclosure of the
27. identity of informants who are percipient witnesses. United States v. Cervantes,
28. 542 F.2d 773, 775 (9th Cir. 1976) (en banc). Once disclosure is ordered, the
29. People are required to make reasonable efforts to secure the informant's presence
30. at trial. United States v. Montgomery, 998 F.2d 1468, 1475 (9th Cir. 1993).
31. While there is no fixed rule with respect to disclosure, four considerations
32. are relevant. These are (1) "The crime charged," (2) "possible defenses," (3) "the
33. possible significance of the informant's testimony," and (4) "other relevant
34. factors." Roviaro, 353 U.S. at 60-61. Where an informant claims to have
35. knowledge of a crime because of his participation with the defendants in the
36. charged illegal activities, his knowledge and information are particularly
37. important to the defense:
38. In light of [the informant]'s role in the narcotics transaction with
39. which appellants were charged, it cannot be said that disclosure of
40. [the informant]'s identity would not have been "relevant or helpful" to
41. the appellant's defense Because [the informant] was a
42. participant in the events that were critical to the prosecution's case, no
43. claim could be raised under Roviaro, nor was it raised, that [the
44. informant]'s identity could be lawfully withheld from the appellants.
45. [Citations omitted.]"
46. United States v. Hernandez, 608 F.2d 741, 744-745 (9th Cir. 1979); see also United 24 States v. Miramon, 443 F.2d 361, 362 (9th Cir. 1971).
47. The requirement that the People disclose an informant’s identity and address
48. turns on whether the informant's testimony is essential to a fair determination of
49. the case. United States v. Roberts, 388 F.2d 646 (2nd Cir. 1968). See also United
50. States v. Anderson, 509 F.2d 724 (9th Cir. 1975) (stating that it is within the
51. Court's discretion to compel disclosure even when use of the informant goes only
52. to probable cause).
53. As to all informants with first-hand information, the defense is entitled to a
54. revelation of their whereabouts and addresses prior to trial so that sufficient
55. investigation into their background can be made. The location and present
56. whereabouts of the informants must be disclosed at this time so that investigation

8 may be made into the credibility and background of these informants prior to trial.

1. Any assertion by the People that there is some unspecified danger to the
2. informants is insufficient to justify withholding the information concerning their
3. whereabouts. As Hernandez makes clear, the decision concerning potential
4. "danger" must be made only after an evidentiary hearing. Hernandez, 608 F.2d at
5. 745, 745 n.3. The Court must also determine whether sufficient grounds continue
6. to exist for maintaining the confidentiality of the informant's identity. People v. 15 Hobbs, 7 Cal.4th 948, 952 (1994).
7. When the informant is a witness, the People's obligation is not fully satisfied
8. by disclosing the identity and location of the informant. The defense here
9. specifically requests that the informant be produced. The People have an
10. obligation to accomplish this or show that, despite reasonable efforts, it was not
11. able to do so. United States v. Hart, 546 F.2d 798, 799 (9th Cir. 1976) (en banc).
12. See also Cervantes, 542 F.2d at 775; Velarde-Villa Real v. United States, 354 F.2d 22 9 (9th Cir. 1965).
13. Unless the People relent in refusing to disclose the identities of the
14. informant(s), the trial court will be required to conduct an in camera inspection to
15. determine whether disclosure of the informant's identity is required. People v.
16. Hobbs, 7 Cal.4th 948, 963 (1994); United States v. Lapsley, 263 F.3d 839, 843 (8th 27 Cir. 2001); United States v. Rutherford, 175 F.3d 899, 902-903 (11th Cir. 1999);
    1. United States v. Ramirez-Rangel, 103 F.3d 1501, 1508 (9th Cir. 1997); United
    2. States v. Moralez, 908 F.2d 565, 569 (10th Cir. 1990); United States v. Saa, 859 3 F.2d 1067, 1072-1075 (2d Cir. 1988); United States v. Panton, 846 F.2d 1335,

4 1336-1337 (11th Cir. 1988); United States v. Sharp, 778 F.2d 1182, 1187 (6th Cir.

1. 1985). If it appears that any informant is a material witnesses, the People are
2. required to disclose his identity and whereabouts, and to make him available to the
3. defense.

# B. Brady Requires The People To Disclose To The Defense All Evidence

1. **That Can Be Used To Impeach Prosecution Witnesses**
2. The prosecution's duty to disclose exculpatory evidence in possession of
3. those under his authority includes information possessed by informants as well as
4. officers, agents and law enforcement employees. Merrill v. Superior Court (1994) 13 27 Cal.App.4th 1586, 1593-94; Pen. Code § 1054.1(e); United States v.

14 Spagnoulo, 960 F.2d 990, 994 (11th Cir. 1992). See also United States v. Kearns, 15 5 F.3d 1251 (9th Cir. 1993); United States v. Isgro, 974 F.2d 1091 (9th Cir. 1992).

1. Even when the prosecutor does not himself or herself possess Brady material, he
2. or she has a duty to learn of any favorable evidence known to other government
3. agents, including the police. See People v. Renchie, 201 Cal. App. 2d 5 (1962);
4. Engstrom v. Superior Court, 20 Cal. App. 3d 240 (1972); Kyles v. Whitley, 514 20 U.S. 419, 437 (1995); see e.g., United States v. Wood, 57 F.3d 733, 737 (9th Cir.

21 1995); McMillian v. Johnson, 88 F.3d 1554, 1568-1569 (11th Cir.), amended by 22 101 F.3d 1363 (11th Cir. 1996); United States v. Brooks, 966 F.2d 1500, 1502- 23 1505 (D.C.Cir. 1992).

1. The scope of Brady includes evidence and information which can be used
2. by the defense exclusively to impeach prosecution witnesses at any stage of the
3. trial. United States v. Bagley, 473 U.S. 667, 676-677 (1985) (plurality opinion)
4. (impeachment evidence is subject to Brady disclosure; no distinction should be
5. made with respect to constitutional disclosure requirements); United States v.
6. Brumel-Alvarez, 991 F.2d 1452, 1461 (9th Cir. 1993) (due process violated
7. because state failed to disclose government-created report which was highly
8. critical of prosecution's chief witness); United States v. Shaffer, 789 F.2d 682,
9. 687-689 (9th Cir. 1986) (due process violated by government's failure to disclose
10. witness's undercover capacity and government's payments in similar investigation
11. because information could have been used to impeach credibility of important
12. witness).
13. The information requested includes, but is not limited to, any deals,
14. promises, or inducements made to witnesses in exchange for their testimony.

11 (People v. Haydel, 12 Cal. 3d 190 (1974); Napue v. Illinois, 360 U.S. 264 (1959);

1. People v. Ruthford 14 Cal. 3d. 399, 408 (1975), overruling recognized on other
2. grounds, In re Sassounian, 9 Cal.4th 535, 545(1995); Bagley, 473 U.S. at 669-670.
3. The standard for granting disclosure under Bagley is whether it is "reasonably
4. probable that, had the evidence been disclosed to the defense, the result of the
5. proceeding would have been different." Id. at 682.
6. The good or bad faith of the prosecution is irrelevant to the Brady analysis.
7. Brady, 373 U.S. at 87; United States v. Agurs, 427 U.S. 97, 110 (1976); see e.g.,
8. Spicer v. Roxbury Corr. Inst., 194 F.3d 547, 558-559 (4th Cir. 1999) (Brady
9. violation because prosecutor withheld evidence; lack of bad faith irrelevant);
10. Brown v. Borg, 951 F.2d 1011, 1015 (9th Cir. 1991) (because exculpatory evidence
11. was withheld by prosecutor, judicial inquiry focuses on effect on defendant's
12. rights, not on prosecutor's intentions); United States v. Spagnoulo, 960 F.2d 990,
13. 994-995 (11th Cir. 1992) (suppression for Brady purpose is not measured by
14. prosecutor's moral culpability).
15. Failure to produce all material evidence favorable to the accused is a due
16. process violation. Borg, 951 F.2d at 1015.

# C. Mr. Chaidez Is Entitled To Discover The Conviction Records Of All

1. **The People’s Witnesses**
2. Rule 788 of the California Rules of Evidence permits a witness's credibility
3. to be attacked or proof of the witness's conviction of a felony. People v. Beagle 5 (1972) 6 Cal. 3d 441; In Re Ricky B. (1978) 82 Cal. App. 3d 106, 113-14; accord,
4. Foster v. Superior Court (1980) 107 Cal. App. 3d 218, 227. See, People v. Memro
5. (1985) 38 Cal. 3d 658; State of California Ex Rel Dept. of Transportation v.
6. Superior Court (1985) 37 Cal. 3d 847. In addition, conduct underlying a prior
7. misdemeanor committed by a witness is admissible to impeach that witness if such
8. conduct involved moral turpitude and thus has some logical bearing upon the
9. veracity of the witness. People v. Wheeler, 4 Cal.4th 284, 295-96 (1992).
10. Impeachment invokes the defendant's constitutional right to confrontation. See
11. e.g., Davis v. Alaska, 415 U.S. 308 (1974); Chambers v. Mississippi, 410 U.S. 284 14 (1973).
12. In addition to its direct impeachment value, the complete "rap sheet" of a
13. witness is discoverable, whether or not impeachment will be appropriate, because
14. it may lead to further discovery of evidence of promises made to the witness. See
15. United States v. Auten, 632 F.2d 478, 483 (5th Cir. 1980) (conviction reversed
16. based on government's failure to disclose witness's prior criminal record).

# D. The Prosecution Has A Continuing Duty Of Disclosure

1. The People have a continuing duty to disclose newly discovered information
2. which satisfies defendant's request. Hill v. Superior Court 10 Cal. 3d 812, 821
3. (1974); In re Ferguson, 5 Cal. 3d 525 (1971); Brady v. Maryland, 373 U.S. 83;
4. ABA Standards, § 4.2; United States v. Stevens, 985 F.2d 1175, 1181 (2d Cir. 25 1993); United States v. Chestang, 849 F.2d 528, 533 (11th Cir. 1988).
5. Inasmuch as there may be ongoing circumstances with respect to these
6. witnesses, including further inducements, new criminal charges and revelations
7. concerning false statements and dishonesty, it is important that Brady imposes a
8. continuing duty upon the prosecution throughout the proceedings. See Mooney v.
9. Holohan, 294 U.S. 103, 108 (1935) (due process violated when prosecutor learned
10. during trial that witness committed perjury but failed to inform defense counsel);
11. Paradis v. Arave, 240 F.3d 1169, 1179 (9th Cir. 2001) (due process violated by
12. government's failure to produce autopsy notes inconsistent with doctor's
13. testimony, even if notes may have been admissible as evidence); Nuckols v.
14. Gibson, 233 F.3d 1261, 1266-1267 (10th Cir. 2000) (due process violated when
15. prosecution failed to produce impeachment evidence implicating sheriff in thefts
16. from sheriff's station when sheriff was only witness to an alleged Miranda waiver);
17. United States v. Cuffie, 80 F.3d 514, 518 (D.C.Cir. 1996) (due process violated by
18. government's failure to disclose evidence of witness's prior perjury even though
19. witness had already been impeached on basis of cocaine addiction, cooperation
20. with prosecution, incentives to lie, and violation of oath as police officer;
21. "undisclosed impeachment evidence can be immaterial because of its cumulative
22. nature only if the witness was already impeached at trial by the same kind of
23. evidence") [emphasis added]; Thomas v. Goldsmith, 979 F.2d 746, 749-750 (9th
24. Cir. 1992) (due process violated when prosecution withheld exculpatory evidence
25. acquired during trial even though the defense never made a specific request nor
26. argued its existence in the lower court); Isgro, 974 F.2d at 1098 (government
27. initially failed to produce witness's exculpatory Grand Jury testimony); Walker v.
28. Lockhart, 763 F.2d 942, 955, 959 (8th Cir. 1985) (en banc) (due process violated
29. when state failed to disclose tape recording transcript in which a third party
30. admitted firing shots at decedent police officer); McDowell v. Dixon, 858 F.2d
31. 945, 949-50 (4th Cir. 1988) (government failed to disclose victim's original
32. description of assailant). 27 //

# III.

* 1. **CONCLUSION**
  2. For each of the reasons stated, Mr. Chaidez’ discovery motion should be
  3. granted. 5

DATED: September 4, 2013 Respectfully submitted,

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SHERMAN & SHERMAN

7 A Professional Law Corporation

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9 By: VICTOR SHERMAN

1. Attorney for Defendant
2. LIDELFONSO CHAIDEZ

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# DECLARATION OF VICTOR SHERMAN

* 1. VICTOR SHERMAN, being first duly sworn, declares:
  2. 1. I am an attorney at law admitted to practice before this Court and am
  3. counsel for defendant Lidelfonso Chaidez in No. .
  4. 2. I am informed and believe, and thereon allege, that some of the items
  5. sought in this discovery motion, insofar as they exist, are material to the defense of
  6. this matter and in the possession, custody or control of the People, and are
  7. otherwise unavailable to the defendant except through this discovery motion.
  8. 3. The People have sealed the entirety of the probable cause portion of the
  9. affidavit in support of the search warrant in this case to protect the confidentiality
  10. in the identities of informants. The informant(s) appear to have been percipient to
  11. various activities involving the defendants in this case and may therefore be
  12. material witnesses or have information which could prove exculpatory.
  13. 4. I believe that further information, including the identities, addresses and
  14. other relevant information concerning these informants, is necessary to permit Mr.
  15. Chaidez to adequately prepare for trial and prepare pre-trial motions that are
  16. necessary to the defense to the charges against him. I therefore respectfully
  17. request that this Court enter an order for the discovery sought herein.
  18. I declare under penalty of perjury under the laws of the State of California
  19. that the foregoing is true and correct, except as to those matters stated on
  20. information and/or belief, and as to those matters, I believe them to be true.
  21. Executed this day of , 201\_, at Santa Monica, California. 23

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25 VICTOR SHERMAN