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ENDORSED
FILED
San Francisco County Superior Court

JUN 24 2010

CLERK OF THE COURT
BY: SHERIFE HUSENY
Deputy Clerk

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9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SAN FRANCISCO

11 PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 vs.

CHALLENGE FOR CAUSE AND
VERIFIED STATEMENT (CODE CIV.
PROC. § 170.1)

14
15 TINA BARFIELD 2435077,
16 ANDRE ARCENEUX 2353819,
17 RAYMOND BOOTH 2385044,
18 ERIC BRANDON 2440362,
19 ARMANDO CASTILLO 2411845,
20 ANTONIO GARCIA 2403587,
21 FRANCISCO GARCIA 10000854,
22 FRANCISCO HERNANDEZ 2426893,
23 PAUL HOA 2385039,
24 JAMES LEWIS 2436134,
25 KAREN MONTOYA 2440132,
26 AVERY NEWCOMER 2437735,
27 DARYL PORTER 2412698,
28 RICK SHORT 2448234,
29 RANDY STEED 10004673,
30 STEPHEN WALLACE 10000328,
31 JAHMAL WINSTON 2343319,
32 SUCHA RUNGRATTANAKASIAN
33 2433420

Date: June 24, 2010
Time: 3:30 p.m.
Dept. 25

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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10 PEOPLE OF THE STATE OF CALIFORNIA,

SCN: 2435077

11 Plaintiff,

12 vs.

13 TINA BARFIELD, et al.,

14 Defendant.

CHALLENGE FOR CAUSE AND
VERIFIED STATEMENT (CODE CIV.
PROC. § 170.1)

Date: June 24, 2010

Time: 3:30 p.m.

Dept. 25

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18 TO DEFENDANTS BY AND THROUGH THEIR ATTORNEYS, AND TO THE ABOVE
19 ENTITLED COURT:

20 PLEASE TAKE NOTICE that on the above listed date and time or as soon thereafter as
21 the matter can be heard in Department 25 of the above-entitled court, the People will move for a
22 challenge for cause and the disqualification of the Honorable Judge Anne-Christine Massullo in
23 the above referenced matters, pursuant to the Code of Civil Procedure, §§ 170.1-170.3 in that facts
24 have arisen which call into question whether Judge Massullo can be impartial. This motion is
25 based upon the records, papers and files within the case, the within notice of motion, memoran-
26 dum of points and authorities and supporting declaration.

27 **STATEMENT OF CASE**

28 On April 6, 2010, Defendant Tina Barfield ("Barfield") filed a Motion to Dismiss for viola-

1 tions under *Brady v. Maryland* (1963) 373 U.S. 83 or, in the alternative, to compel discovery. Bar
2 field's motion was based on the SFPD's investigation into irregularities within the Crime Lab, in-
3 cluding the suspected theft of narcotics by a former criminalist, Deborah Madden. Barfield also
4 filed a motion to join ongoing, related discovery proceedings that were currently being heard in
5 Department 25 of the Superior Court, being presided over by Judge Anne-Christine Massullo.¹
6 Barfield is charged with two counts of violating Health and Safety Code § 11351, one count of
7 Health and Safety Code § 11351.5 and one count of Penal Code § 12021(a)(1). On April 13, 2010,
8 Barfield's case was joined with the ongoing discovery matters in Department. 25.

9 STATEMENT OF FACTS

10 May 17, 2010

11 Defendants in the above cases moved to dismiss, or in the alternative, to compel the pro-
12 duction of documents. On May 17, 2010, the Honorable Judge Anne-Christine Massullo issued a
13 written Order compelling discovery in Ms. Barfield's case. The Court denied the motions to dis-
14 miss without prejudice, ruling that they would be heard and decided on a case-by-case basis by the
15 judge assigned to hear any further proceedings. (Exh. A, May 17, 2010 Order and statement of
16 Decision re Motion to Dismiss or to Compel Disclosure of Documents and for a Protective Order
17 at 2:1-11; 2:20-22; 26:4-8.)

18 The May 17 Order encapsulated all previous oral orders that had been made between April
19 13, 2010 and May 17, 2010. The Order also compelled further discovery that had not yet been
20 ordered disclosed.

21 In addition to the above ruling compelling disclosure, the Court made a number of findings
22 with which the People take issue. The Court found that the San Francisco District Attorney's Of-
23 fice's failure to produce evidence in its possession regarding Deborah Madden and the Crime Lab
24 violated defendants' constitutional rights. (Exh. A, Order at p. 17:4-5.) Second, the Court found
25 that the District Attorney's Office did not have policies or procedures to comply with *Kyles v.*

26
27 ¹ The Court had previously been assigned as the trial judge in *People v. Mario Bell*, SCN 9000568,
28 2421316, 2430966. The discovery relating to the crime lab was turned over to the court for *in camera* review in those matters. Mr. Bell's case was dismissed on March 26, 2010. The Court retained those documents that had been provided for *in camera* review. When the current litigants filed their motions to dismiss or compel discovery, the matters were sent to Judge Massullo's courtroom for hearing on April 9, 2010.

1 *Whitley* (1995) 514 U.S. 419, *Brady v. Maryland* (1963) 373 U.S. 83, *Giglio v. U.S.* (1972) 405
2 U.S. 150 and California statutes regarding criminal histories of San Francisco Police Department
3 witnesses. (Exh. A, Order at pp. 13:4-5; 14:11-13; 14 fn.7.) Third, the Court found that by No-
4 vember 19, 2009, the District Attorney's Office was aware of problems with Madden and the
5 Crime Lab and failed to disclose this exculpatory information. (Exh. A, Order at pp. 13:1-3;
6 16:11-12; 16:21-17:2.)

7 **May 25, 2010**

8 The District Attorney's Office strongly disagrees with the Court's findings regarding the
9 failures of the District Attorney's Office.² Thus, on May 25, 2010, the District Attorney's Office
10 filed the People's Opposition to Defendant's Motion to Set Aside the Information For Failure to
11 Provide Discovery in one of the cases before the Court. (Exh. B, Opposition to Motion to Set
12 Aside.) The District Attorney believes the Court erred as a matter of law in making its findings for
13 the following reasons.

14 First, constitutional error occurs only if the evidence is material in the sense that its sup-
15 pression undermines the confidence in the outcome of the trial. (*U.S. v. Bagley* (1985) 473 U.S.
16 678; *Kyles, supra*, 514 U.S. at p. 434.) (Exh. B, Opposition to Motion to Set Aside at pp. 3:24-
17 4:3.) Defendants' trials had not yet begun or their cases had been resolved by pleas. Conse-
18 quently, contrary to Judge Massullo's findings, the San Francisco District Attorney's Office did
19 not violate defendants' constitutional rights.

20 Second, none of the Court's cited authorities requires that the District Attorney's Office
21 have a written *Brady* policy. Nowhere do the authorities the Court relies upon hold that the failure
22 to have written policies in place rises to the level of a constitutional violation. (Exh. B, Opposi-
23 tion to Motion to Set Aside at p. 4:14-19.)

24 Third, the Court's assertion that by November 19, 2009, the District Attorney's Office was
25 aware of, and failed to disclose problems with Madden and the Crime Lab is unsupported by the
26 record cited by the Court. The November 19, 2009 email from an assistant district attorney to her
27 supervisor notes that Madden had become increasingly undependable for testimony by not appear-

28 _____
The District Attorney's Office does not disagree with the Court's May 17, 2010 Order to the extent it ordered disclosure of discovery and denied the motions to dismiss as needing to be decided on a case-by-case basis.

1 ing for court and calling in sick on days when she was needed to testify; that there was anecdotal
2 evidence that Madden was unhappy with the Lab and picked times to be sick that would frustrate
3 the lab's work; and until the SFPD could figure out what was going on with Madden, the District
4 Attorney's Office might not file cases in which she had tested the narcotics. That an employee had
5 court attendance issues coupled with unsubstantiated rumors of job dissatisfaction is neither mate-
6 rial, exculpatory, nor sufficiently specific to rise to the level of *Brady* material. *Brady* does not
7 compel the disclosure of speculation based on rumor and hearsay. (See *United States v. Johnson*
8 (7th Cir. 2000) 223 F.3d 665, 674; *Smith v. Stewart* (9th Cir. 1998) 140 F.3d 1263, 1273.) (Exh. B,
9 Opposition to Motion to Set Aside at pp. 4:23-5:11.) Consequently, the District Attorney's Office
10 did not fail to disclose exculpatory information actually in its possession.

11 **May 27, 2010**

12 Ms. Barfield's case was heard on May 27, 2010 as part of the ongoing motion to compel
13 discovery. On that date, Ms. Madden's attorney, Paul DeMeester, spoke to the People off-the-re-
14 cord regarding a narcotics case in federal court which had received a downward departure. Mr.
15 DeMeester requested information about the case and informed the People he would provide identi-
16 fying information on the case. Soon thereafter, Judge Massullo entered the courtroom to com-
17 mence the afternoon proceedings. At that time, Judge Massullo disclosed on the record that Mr.
18 DeMeester had contacted her husband, John Hemann³ concerning an unrelated federal case.

19 **The Court:** The Court should bring this up, Mr. DeMeester. It
20 certainly does not effect this Court's ability to continue hearing
21 cases, but I understand Mr. DeMeester contacted my husband
22 about a matter. And he's representing – his name is John He-
23 mann.

24 **Mr. DeMeester:** Really? I didn't know the connection. That's
25 interesting.

26 **The Court:** And the Court needs to disclose it. My husband
27 disclosed to me that you had contacted him. It's a federal court
28 matter, has nothing to do with this case, wouldn't effect this
Court's ability to continue to hear these matters. But I want to
state on the record, Mr. DeMeester, so you know there is that
connection.⁴

³ Exh. C, Reporter's Transcript of Proceedings, May 27, 2010, at 3:13-24.

⁴ *Id.*

1 Mr. DeMeester subsequently informed the People that Mr. Hemann was the attorney involved in
2 the federal case that Mr. DeMeester had mentioned to the Court previously.

3 **June 1, 2010**

4 On June 1, 2010 an ad ran in *The Recorder* newspaper announcing a Continuing Legal
5 Education class ("CLE") to be put on by the San Francisco Bar Association, entitled "*Brady Dis-*
6 *closures: What's Gone Wrong and How to Make it Right.*"⁵ The CLE was scheduled for June 17,
7 2010. One of the four panelists listed was John Hemann, Judge Massullo's husband. Mr. Hemann
8 was the only member of the private defense bar advertised as a panelist.

9 The District Attorney's Office did not become aware of the ad or the CLE until June 14,
10 2010. Furthermore, the ad ran after the initial publication, including appearances in the June 2, 4,
11 7, and 14, 2010 editions of *The Recorder*.⁶ The CLE was also advertised on the San Francisco
12 Bar Association's website prior to the event.⁷

13 Additionally on June 1, 2010, Dan Levine reported on the front page of *The Recorder* that
14 the Honorable Judge Anne-Christine Massullo's husband, John Hemann, is currently representing
15 a criminal client, Antoinette Cowden, who was arrested in San Francisco in 2009 with 5.55 grams
16 of crack and \$147 on her person.⁸ Only five grams are needed to trigger a mandatory minimum
17 sentence in federal prison, and the plea Ms. Cowden originally agreed to would have carried at
18 least that much time.⁹ The investigation, arrest, and testing of narcotics was conducted by the
19 SFPD and the SFPD Crime Lab. However, the case was not pursued by the San Francisco District
20 Attorney's Office, but rather the U.S. Attorney's Office in federal court.

21 After disclosures of problems with the San Francisco Crime Lab, the U.S. Attorney's Of-
22 fice announced in court "that the weight would be recalculated to between 4 and 5 grams – thus
23 eliminating the mandatory minimum, according to Morgan, Lewis & Bockius partner, John He-
24 mann, Cowden's court appointed lawyer."¹⁰ According to Mr. Hemann, U.S. District Judge Wil-

25
26 ⁵ Exhibit D, *The Recorder*, June 1, 2010.

27 ⁶ Attached as Exhibit E are the June 2, 4, 7, and 14, 2010 ads in *The Recorder*.

28 ⁷ It is unclear to the People how far in advance the CLE was publicized on the SF Bar website.

⁸ Levine, Dan. "San Francisco Drug Lab Scandal Hurting Federal Cases," *The Recorder*, June 1,
2010., attached as Exhibit F.

⁹ Levine, Dan. "San Francisco Drug Lab Scandal Hurting Federal Cases," *The Recorder*, June 1,
2010.

¹⁰ Id.

1 liam Alsup "told AUSA McCarthy that it appeared the government was doing the right thing by
2 dropping the mandatory minimum."¹¹ The article pointed out that Mr. Hemann "is married to
3 Anne-Christine Massullo, the San Francisco Superior Court Judge riding herd over the city's evi-
4 dence and disclosure problems."¹²

5 This Court filed an order on June 2, 2010 requesting information and clarification from the
6 District Attorney's Office regarding documents the People had previously produced for the Court's
7 review. The District Attorney's Office filed a Motion to Continue pursuant to Penal Code section
8 1050, and the Court set the Motion to Continue for June 4, 2010, at 1:30 p.m.

9 **June 4, 2010**

10 At the June 4, 2010 calling of the case, the People asked for a sidebar with the Court and
11 all joined parties before beginning the hearing. The People advised the Court and counsel that
12 they would be asking for clarification from the Court regarding the information relayed in the *Re-*
13 *recorder* article.¹³ The People stated four questions they had with respect to a potential conflict of
14 interest:

15 **Mr. Henderson:** When did her Honor learn or know that your husband was repre-
16 senting a client that was involved in a case where a narcotics – where narcotics
17 were tested by the narcotics division of the San Francisco crime lab?

18 **The Court:** All right. Next.

19 **Mr. Henderson:** If your Honor was aware of any other defendants that are repre-
20 sented by your husband where the defendant faces a narcotics charge, were tested at
21 the now closed narcotics (section) of the San Francisco crime lab?

22 **The Court:** Next.

23 **Mr. Henderson:** When your husband became the attorney of record of Antoinette
24 Kowden.

25 **The Court:** Next.

26 **Mr. Henderson:** If your Honor was aware of any other matters that would create a
27 potential conflict of interest viz a vis your husband's defense of related narcotics
28 cases?

The Court: all right. Why don't we do this: the Court is happy to look into that.¹⁴

The Court went on to state that the People "should follow whatever procedure that the
People think is appropriate to follow."¹⁵ At that time, the People reserved any rights they had per-

27 ¹¹ Id.

28 ¹² Id.

¹³ Exhibit G, Reporter's Transcript of Proceedings, June 4, 2010 at pp. 3-4 & 17-18. ("RT
PAGE:LINE June 4, 2010")

¹⁴ RT 4:9-28. (June 4, 2010)

¹⁵ RT 5:2-4. (June 4, 2010)

1 taining to any answers to those questions.¹⁶ At the close of proceedings on June 4, 2010, the Court
2 and the People had the following exchange:

3
4 **The Court:** Again, I want to follow procedure and so if you provide those ques-
5 tions to the Court, and the Court will – it is kind of an odd situation where the
6 Court is being asked questions. And again, if your office feels that it needs to make
7 a motion, then it needs to make a motion and the Court will address the issues ac-
8 cordingly.

9 **Mr. Henderson:** I think the challenge for my office is the basis of that motion
10 without having the answers to these questions is difficult at best to do.

11 **The Court:** So the questions are: Are there any other cases in which my husband
12 may be representing someone –

13 **Mr. Henderson:** Where the narcotics are tested by the San Francisco crime lab?

14 **The Court:** Again, the Court wants to obviously be responsive. But I also want to
15 follow the procedures. There is a procedure set out, under Civil Code 170. And so
16 the Court wants to be mindful of that procedure. That is all that the Court can say
17 at this point. Why don't you provide the questions and then whatever authority you
18 may have and the Court will look at them and clearly the Court believes that it may
19 be an appropriate disclosure in a timely fashion and that nothing that – the Court
20 can hear these cases and there is no conflict that the Court sees in any of this. But,
21 why don't you provide the questions and then the basis, and I will look at that.¹⁷

22 **June 10, 2010**

23 On June 10, 2010, Ms. Barfield's case was heard again in Department 25 before the Hon-
24 orable Judge Anne-Christine Massullo. On that date, the People attempted to file their written in-
25 quiries, per the Court's suggestion.¹⁸ The Court did not allow the People to file their inquiries, stat-
26 ing that there was a procedure to follow in that the District Attorney's Office should file a declara-
27 tion and then she would file the appropriate response. (See Verification and attached Declaration
28 of Paul Henderson.)

29 **June 17, 2010**

30 On June 17, 2010, the San Francisco Bar Association hosted a Continuing Legal Education
31 class ("CLE") entitled "*Brady* Disclosures: What's Gone Wrong and How to Make it Right."¹⁹
32 The CLE was set up as a panel discussion, wherein four panelists discussed the law surrounding
33 *Brady v. Maryland*, recent high profile cases where *Brady* violations occurred or were suspected,

34 ¹⁶ RT 4:28; 17:13-14. (June 4, 2010)

35 ¹⁷ Exh. F, RT 18:24-19:9-19. (June 4, 2010)

36 ¹⁸ The People have attached a copy of the written inquiries they attempted to file on June 10, 2010
37 herein as Exhibit H.

38 ¹⁹ The *Recorder* ad is attached herein as Exhibit D.

1 and what can be done to "fix" some of the problems surrounding *Brady*. One of the panelists was
2 John Hemann, the Honorable Judge Massullo's husband.²⁰ Mr. Hemann was the only private de-
3 fense attorney on the panel.

4 During the course of the CLE discussion, the investigation of the now closed narcotics sec-
5 tion of the San Francisco Crime Lab was referred to as one of the high profile instances where
6 *Brady* violations had occurred. The panel also focused on what should be done, in general, to en-
7 sure that *Brady* violations do not occur in the future. Mr. Hemann stated that the solution to any
8 *Brady* issues that may arise would be for the prosecution to turn over everything in its possession,
9 regardless of materiality, to the defense. The only exception should be a very small universe of
10 information or documents that needed to be kept confidential for privacy, safety or investigative
11 concerns. Nonetheless, the prosecution should still be required to inform the defense that they
12 have those materials, and generally describe what they are. Mr. Hemann did not personally com-
13 ment on anything related to the investigation of the Crime Lab or this pending litigation.

14 VERIFICATIONS

15
16 I, PAUL HENDERSON, declare the following:

17 I am an Assistant District Attorney and the Chief of Administration for the District Attor-
18 ney's Office in and for the City and County of San Francisco and am currently assigned to handle
19 discovery matters concerning the San Francisco Police Crime Laboratory.

20 I was present at the June 10, 2010 calling of *People v. Tina Barfield*, SCN 2435077 and
21 joined matters, heard in Department 25 of the Superior Court. On June 10, 2010, I attempted to
22 lodge a document titled "Preliminary Factual Inquiry Regarding Potential Conflict of Interest"
23 with the Court. That document contains written questions regarding any potential conflict of inter-
24 est that this Court may have. It is my memory that I informed the Court on the record at the June
25 10, 2010 hearing that I wished to lodge the questions with the Court. It is my memory that the
26 Court informed the People that she would not allow the People to lodge the questions with the
27 Court.

28

²⁰ The other panelists were Brian Stretch (Criminal Chief, U.S. Attorney's Office), Brenda Atkinson (Chief Division Counsel, FBI) and Geoffrey Hansen (Chief Assistant, Federal Public Defender).

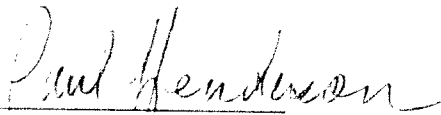
1 What occurred during the June 17, 2010 CLE panel discussion is supported by the declara-
2 tion of Lailah Morris.

3 I have read the foregoing motion and know the contents thereof. The other material factual
4 allegations are supported by reference or citation to official court records, transcripts of proceed-
5 ings, newspaper articles or advertisements, and documents in the public domain, copies of which
6 have been submitted as exhibits in support of this motion.

7 I declare under the penalty of perjury that the foregoing is true and correct except as to
8 those matters stated upon information and belief and as to those matters I believe them to be true
9 and correct.

10 Executed this June 24, 2010, in San Francisco, California.

11 Respectfully submitted,

12 
13 PAUL HENDERSON
14 Assistant District Attorney

15 I, LAILAH MORRIS, declare the following:

16 I am an Assistant District Attorney in and for the City and County of San Francisco and am
17 currently assigned to assist in discovery matters concerning the San Francisco Police Crime Labo-
18 ratory.

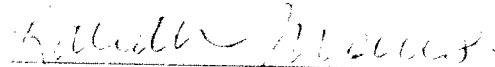
19 On June 17, 2010 I attended a Continuing Legal Education class at 301 Battery Street in
20 the City and County of San Francisco entitled "*Brady* Disclosures: What's Gone Wrong and How
21 to Make it Right." The CLE class was set up as a panel discussion and one of the panelists was
22 introduced as John Hemann, a partner at the law firm of Morgan, Lewis & Bockius.

23 Upon information and belief, Mr. Hemann proffered during the class that the solution to
24 *Brady* problems is for the prosecution to turn over everything in its possession, except a small uni-
25 verse of items that need to be withheld for privacy or investigatory concerns. Mr. Hemann also
26 proffered that even though that small universe should be withheld, the prosecution should never-
27 theless inform the defense as to what those items are and why they are being withheld.

28 I declare under the penalty of perjury that the foregoing is true and correct except as to
those matters stated upon information and belief and as to those matters I believe them to be true
and correct.

1 Executed this June 24, 2010, in San Francisco, California.

2 Respectfully submitted,

3 

4 LAILAH MORRIS

5 ASSISTANT DISTRICT ATTORNEY

6 **LEGAL STANDARDS**

7 **CODE OF CIVIL PROCEDURE SECTION 170**

8 In every case, a judge has a duty to decide any proceeding in which he or she is not dis-
9 qualified. (Code Civ. Proc. § 170.) In Code of Civil Procedure section 170.1, the legislature enu-
10 merated several instances in which a judge shall be disqualified from hearing a case or proceeding.
11 A judge shall be disqualified for any reason if the situation is such that a person aware of the facts
12 might reasonably entertain a doubt that the judge would be able to be impartial. (Code Civ. Proc.
13 §170.1., subd. (a)(6)(A)(iii).) A judge shall also be disqualified if the judge has a financial inter-
14 est in the subject matter of a proceeding. (Code Civ. Proc. § 170.1, subd. (a)(3)(A).) A judge will
15 be deemed to have a financial interest in the subject matter of the proceeding if her spouse has a
16 financial interest in the proceeding. (Code Civ. Proc. § 170.1, subd. (a)(3)(B)(i).)²¹

17 Code of Civil Procedure section 170.3 provides that a Judge shall determine whether or not
18 she is disqualified to hear pending matters; if she concludes that she is disqualified, she shall then
19 notify the presiding judge of the court of her recusal. (Code Civ. Proc. § 170.3, subd. (a)(1)). If a
20 judge who should disqualify herself refuses or fails to do so, any party may file with the clerk a
21 written verified statement objecting to the hearing or trial before the judge and setting forth the
22 facts constituting the grounds for disqualification. (Code Civ. Proc. § 170.3, subd. (c)(1).)

23 The moving party must file their written statement at the earliest practicable opportunity
24 after discovery of the facts constituting the grounds for recusal. (Code. Civ. Proc. § 170.3, subd.
25 (c)(1)). The issue of disqualification should be raised when the facts “constituting the grounds for

26 _____
27 ²¹ Although not dispositive in this case, the Judicial Code of Ethics are instructive on judge’s duties. “A
28 judge shall avoid impropriety and the appearance of impropriety in all of the Judge’s activities.”
(Judical Code of Ethics, Canon 2.) Furthermore, a judge shall disqualify herself in any proceeding
in which disqualification is required by law. (Judicial Code of Ethics, Canon 3E(1).) Finally, “in
all trial court proceedings, a judge shall disclose on the record information that is reasonably rele-
vant to the question of disqualification under Code of Civil Procedure § 170.1, even if the judge
believes there is no actual basis for disqualification.” (Judicial Code of Ethics, Canon 3E(1).)

1 disqualification are first discovered and, in any event, before the matter involved is submitted for
2 decision.” (*People v. Baker* (1975) 52 Cal.App.3d 590, 594.) Here, the People reserved our
3 rights on June 4 regarding the disqualification issue. On June 10, the Court informed the People
4 there was a procedure to follow in that the District Attorney’s Office should file a declaration and
5 then the Court would file the appropriate response. Mr. Hemann was a panelist on the CLE *Brady*
6 discussion on June 17, 2010. This motion is filed within one week of Mr. Hemann’s panel par-
7 ticipation.

8 The disqualification statute continues to govern so long as the judge has not “completed
9 judicial action” in the pending case. (*Urias v. Harris Farms* (234 Cal.App.3d 415,423.). The dis-
10 qualification must be alleged in a verified written statement that must be personally served on the
11 Court or her clerk and all parties to the action.

12 The disqualified judge shall not further participate in the proceeding, except as provided in
13 § 170.4 or unless her disqualification is waived by the parties in accordance with § 170.3(b). Pur-
14 suant to § 170.4(b), the judge who has been challenged may strike a statement of disqualification
15 if it is untimely filed or discloses no legal grounds on its face that would warrant disqualification.

16 Once the written verified statement has been filed, the challenged judge may either file a
17 written verified answer admitting or denying the allegations and setting forth any additional in-
18 formation relevant to disqualification or file a consent to the disqualification and notify the presid-
19 ing judge to appoint a replacement. (Code Civ. Proc. § 170.3, subd. (c)(3).) Once the verified
20 statement by the challenging party is filed, the judge deciding the question of disqualification can
21 either hold an evidentiary hearing on the matter or make a decision based upon the basis of docu-
22 ments already filed. (Code Civ. Proc. § 170.3, subd.(c)(6).)

23 Generally, the previous orders of the disqualified judge are voidable. (*People v. Barrera*
24 (1999) 70 Cal.App.4th 541.) However, if the grounds for disqualification are first learned of or
25 arise after the judge has made one or more rulings in a proceeding but before judicial action in that
26 proceeding has been concluded, then the judge’s rulings shall not be set aside by the judge who
27 replaces the disqualified judge, unless good cause can be shown. (Code Civ. Proc. § 170.3, subd.
28 (b)(4).)

1 **The Court:** And the Court needs to disclose it. My husband
2 disclosed to me that you had contacted him. It's a federal court
3 matter, has nothing to do with this case, wouldn't effect this
4 Court's ability to continue to hear these matters. But I want to
5 state on the record, Mr. DeMeester, so you know there is that
6 connection.

7 (Exhibit C, RT of May 27, 2010 at 3:13-24.) From the Court's own statements, a reasonable per-
8 son could conclude that Judge Massullo had discussed the matter of the discovery hearings regard-
9 ing the Crime Lab with her husband, Mr. Hemann, a private criminal defense attorney.

10 Second, in its May 17, 2010 Order, the Court denied the motions to dismiss without preju-
11 dice, ruling that they would be heard and decided on a case-by-case basis by the judge assigned to
12 hear any further proceedings. (Exh. A, Order at 2:9-11; 2:20-22; 26:4-8.) Thus, the *only* issue be-
13 fore the Court necessarily was whether items should be disclosed in discovery. Because of the
14 Court's limitation on its ruling, the issue before the Court was no longer whether a *Brady* violation
15 had occurred. Thus, this Court, in a 26 page opinion, made findings criticizing the District Attor-
16 ney's Office that unnecessarily went beyond the sole discovery production issues before the Court.

17 Third, there is a temporal connection between Judge Massullo's rulings and findings,
18 which the People take issue with, and the publicity surrounding her husband's actions. It has ap-
19 peared in the legal newspaper, *The Recorder*, that Mr. Hemann was able to get a better deal in fed-
20 eral court for his client as a result of the disclosures of the problems in the Crime Lab. On the
21 same day as Mr. Hemann was quoted in *The Recorder* regarding Ms. Cowden's case, an ad ap-
22 peared in *The Recorder* advertising the CLE class, "*Brady* Disclosures: What's Gone Wrong and
23 How to Make it Right." The ad in *The Recorder* named Mr. Hemann and his law firm. That ad-
24 vertisement ran for numerous days. Mr. Hemann appeared as the only private member of the de-
25 fense bar on the CLE panel discussion. It appears that Mr. Hemann is commenting as an authority
26 on *Brady* issues at the same time that his wife is making rulings on *Brady* issues in highly publi-
27 cized cases.

28 At the actual CLE class, Mr. Hemann asserted that the "solution" to potential *Brady* issues
is for prosecutors to turn over *everything* in their possession, regardless of materiality, in each
criminal case. Mr. Hemann advises that prosecutors should disclose everything at the same time
the Court is criticizing the District Attorney for failures to disclose. Mr. Hemann's coverage in the

1 press and public appearance regarding *Brady* come close on the heels of his wife's rulings on the
2 discovery issues concerning the Crime Lab and her May 17 findings regarding the District Attor-
3 ney's Office on *Brady* issues, which we have challenged elsewhere.

4 Moreover, there may be no direct financial interest for Mr. Hemann, but the appearance is
5 such that he is now front and center in the local legal community as a commentator on the *Brady*
6 issues. This creates the appearance that he might be gaining some financial benefit, be it through
7 the repeated, free advertising for the CLE event, *The Recorder* article, his participation in the CLE
8 discussion, or simply name recognition as a defense attorney who has gotten a better deal based on
9 alleged *Brady* issues in the Crime Lab.

10 Fourth, the Court has yet to disclose her husband's specific involvement regarding criminal
11 narcotics cases wherein the evidence was tested by the San Francisco Crime Lab. The People
12 have been denied the ability to clarify or negate any appearance of conflict or impropriety that
13 may be present for the Court. As the preceding facts unfolded in the media, the District Attorney's
14 Office made inquiries of the Court regarding what potential conflict of interest, if any, was present.
15 The Court initially seemed agreeable to answer the People's inquiries, saying she would be happy
16 to look into it. The Court then requested the questions in writing. The Court later declined to ac-
17 cept the written inquiries, stating that the proper procedure would be for the People to file a mo-
18 tion, and she would respond accordingly. The People simply want to determine if the Court has a
19 conflict. The facts that would either establish or negate such a conflict are within the knowledge
20 of Judge Massullo.

21 Taken together, all of these facts at the minimum create an appearance of impropriety such
22 that a person aware of them could reasonably doubt the Court's ability to remain impartial. The
23 Court's failure to disclose anything related to her husband's involvement in Ms. Cowden's case
24 absent prompting from Mr. Demeester, coupled with the Court's harsh criticism of the District At-
25 torney's Office, her husband's recent appearance in the public eye regarding the law surrounding
26 *Brady*, and the Court's refusal to clarify any potential conflict of interest raises a question as to her
27 ability to remain impartial in the current proceedings.
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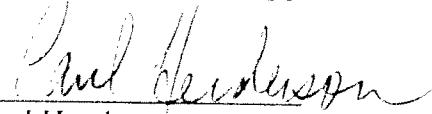
CONCLUSION

1
2 The People do not argue that the Honorable Anne-Christine Massullo is in fact prejudiced
3 against them. The only showing that need be made is that (1) a person aware of the facts might
4 reasonably entertain a doubt regarding the judge's ability to remain impartial or (2) that the Court
5 has a financial interest in the proceedings before it. In the instant case, the People have made a
6 sufficient showing for either charge. Based on Code of Civil Procedure section § 170.1, the facts
7 alleged in the attached verified statement and the points and authorities argued herein, the People
8 respectfully ask for Judge Massullo to recuse herself from this matter..

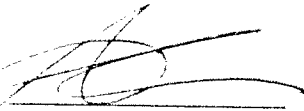
9 Dated: June 24, 2010

10 Respectfully submitted

11 KAMALA D. HARRIS
12 DISTRICT ATTORNEY

13 

14 Paul Henderson
15 Assistant District Attorney,
16 Chief of Administration

17 
18 Sharon Woo
19 Assistant District Attorney

DECLARATION OF PAUL HENDERSON

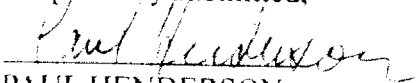
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2
3 I, PAUL HENDERSON, declare the following:

- 4 1. I am an Assistant District Attorney and the Chief of Administration for the District Attorney's
5 Office in and for the City and County of San Francisco and am currently assigned to handle dis-
6covery matters concerning the San Francisco Police Crime Laboratory.
- 7 2. My business address is Office of the District Attorney, 850 Bryant Street, San Francisco, CA
8 94103.
- 9 3. I was present at the June 10, 2010 calling of *People v. Tina Barfield*, SCN 2435077 and joined
10 matters, heard in Department 25 of the Superior Court.
- 11 4. On June 10, 2010, I attempted to lodge a document titled "Preliminary Factual Inquiry Regard-
12ing Potential Conflict of Interest" with the Court. That document contains written questions re-
13garding any potential conflict of interest that this Court may have.
- 14 5. It is my memory that at the June 10, 2010 hearing, I informed the Court on the record that I
15 wished to lodge the questions with the Court.
- 16 7. It is my memory that the Court informed the People that she would not allow the People to
17 lodge the questions with the Court.
- 18 8. What occurred during the June 17, 2010 CLE panel discussion is supported by the declaration
19 of Lailah Morris.
- 20 9. The other material factual allegations are supported by reference or citation to official court
21 records, transcripts of proceedings, newspaper articles or advertisements, and documents in the
22 public domain, copies of which have been submitted as exhibits in support of this motion.

23 I declare under the penalty of perjury that the foregoing is true and correct except as to
24 those matters stated upon information and belief and as to those matters I believe them to be true
25 and correct.

26 Executed this June 24, 2010, in San Francisco, California.

27 Respectfully submitted,

28 
PAUL HENDERSON
Assistant District Attorney
Chief of Administration

DECLARATION OF LAILAH MORRIS

1
2
3 I, LAILAH MORRIS, declare the following:

4 1. I am an Assistant District Attorney in and for the City and County of San Francisco and am cur-
5 rently assigned to assist in discovery matters concerning the San Francisco Police Crime Labora-
6 tory.

7 2. My business address is Office of the District Attorney, 850 Bryant Street, San Francisco, CA
8 94103.

9 3. On June 17, 2010 I attended a Continuing Legal Education class at 301 Battery Street in the
10 City and County of San Francisco entitled "*Brady* Disclosures: What's Gone Wrong and How to
11 Make it Right."

12 4. The CLE class was set up as a panel discussion and one of the panelists was introduced as John
13 Hemann, a partner at the law firm of Morgan, Lewis & Bockius.

14 5. Upon information and belief, Mr. Hemann proffered during the class that the solution to
15 *Brady* problems is for the prosecution to turn over everything in its possession, except a small uni-
16 verse of items that need to be withheld for privacy or investigatory concerns. Mr. Hemann also
17 proffered that even though that small universe should be withheld, the prosecution should never-
18 theless inform the defense as to what those items are and why they are being withheld.

19 I declare under the penalty of perjury that the foregoing is true and correct except as to
20 those matters stated upon information and belief and as to those matters I believe them to be true
21 and correct.

22 Executed this June 24, 2010, in San Francisco, California.

23 Respectfully submitted,

24 

25 LAILAH MORRIS

26 ASSISTANT DISTRICT ATTORNEY

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DECLARATION OF SERVICE

NO. 2435077

I, Sharon L. Woo, state:

(1) That I am a citizen of the United States, over eighteen years of age, an employee of the City and County of San Francisco, and not a party to the within action; that my business address is 850 Bryant St., Rm.322, San Francisco, California 94103.

(2) That on June 24, 2010 I served the attached:

PEOPLE'S CHALLENGE FOR CAUSE AND VERIFIED STATEMENT

By placing a copy of the motion to defendants through their attorneys without exhibits via email; motion with exhibits by personal service to:

Paul DeMeester
Counsel for Deborah Madden
Smith & DeMeester
1766 18th St. # A
San Francisco, CA 94107

John Alden
San Francisco Police Department - MCD
850 Bryant St., 5th Floor
San Francisco, CA 94103

Grace K. Won
Paul Alsdorf
Counsel for Intervenor KTVU, Inc.
Farella Braun & Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104

Deputy Public Defender Christopher Gauger
Counsel for Defendant Tina Bartfield
San Francisco Public Defender's Office
555 Seventh Street
San Francisco, CA 94103

Pam Herzig
Counsel for Defendant Francisco Garcia
255 Kansas Street, Suite 340
San Francisco, CA 94103

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Karl Krooth
133 Sansome St., Suite 706
San Francisco, CA 94104

Fanya Young
Counsel for Paul Hoa
2 N. Sutter Street, Suite 201
Stockton, CA 95202

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

Executed June 24, 2010, at San Francisco, California.



Sharon Woo