

had he been provided with this exculpatory *Brady*¹ material. Should _____ be allowed to withdraw his plea where he was ignorant of critical evidence supporting his defense because the prosecution failed to disclose it?

¹ *Brady v. Maryland* (1963) 373 U.S. 83.

Memorandum of Points and Authorities

Statement of Facts

1. On _____ (i.e. April 25, 2008, _____ entered a guilty plea to one count of Health and Safety Code section _____ (i.e. 11352(a).)
2. On _____ (i.e.: December 3, 2009), _____ was sentenced to three years of formal probation.
3. From March 10 thru 18, 2010, _____'s counsel read newspaper reports that a San Francisco Police Department narcotics laboratory technician named Deborah J. Madden who allegedly absconded with certain drug evidence during her work at the lab. Madden left her job in December 2009 and a lab audit conducted during the same month discovered the evidence tampering. "That review was triggered when other technicians suspected someone had been stealing evidence and supervisor noted apparent tampering with the packaging of drug evidence, San Francisco Police Chief George Gascon said at a news conference" on March 9, 2010.² Specifically, the "investigation linked [Madden] to missing drugs in at least six cases in the latter part of 2009."³ Police officials said that Madden might have been summoned to testify in some

² Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician accused of skimming.

³ *Id.*

of these six cases and may have perjured herself about the evidence.⁴ “Madden was supposed to vouch for the weight and purity of seized drugs but instead used the cocaine.”⁵

⁴ *Id.*

⁵ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician accused of skimming.

5. Newspaper accounts indicate that Madden was interviewed as part of an investigation into the missing drugs where she “leveled charges of her own about the lack of control over drug evidence. One official said Madden called the drug-testing process at the lab ‘sloppy’.”⁶ Madden also said that lab technicians “consistently lost or mishandled evidence.”⁷ These statements call into question the integrity and reliability of all crime lab results.
6. According to news reports, Madden told police that she began to use cocaine in October 2009 and admitted consuming cocaine from five samples of drug evidence.⁸
7. Newspaper accounts also indicate that “police released an audit by the American Society of

⁶ *Id.*

⁷ Exhibit F - San Francisco Chronicle Article - March 15, 2010 - Police waited 2 months to investigate lab tech.

⁸ *Id.*

Crime Laboratory Directors that shows the San Francisco lab does not have a secure chain of custody for evidence, fails to keep detailed case records and does not meet standards of cleanliness. The audit found that the lab is routinely underfunded and understaffed and has to rely on overtime to fulfill its mission.”⁹

⁹ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician accused of skimming; Exhibit I - ASCLD/LAB Inspection Report - San Francisco Police Department Criminalistics Laboratory (Inspected: November 17-20, 2009).

8. Newspaper accounts indicate that Madden's sister informed the crime lab on December 16, 2009 that she found what appeared to be a lab vial of cocaine at Madden's home in San Mateo. Despite informing the crime lab in December of last year, the San Francisco police took two months to launch a criminal probe into Madden's suspected theft of drug evidence.¹⁰ In addition, newspaper accounts indicate that Madden has been in treatment recently for drug and alcohol use.¹¹
9. On March 10, 2010, the newspaper reported that Madden suffered a domestic violence conviction.¹²
10. Madden was arrested on October 2, 2007 on domestic violence and assault charges.¹³ Alcohol was involved. Madden testified in her own defense at trial and San Francisco Crime Lab

¹⁰ Exhibit F - San Francisco Chronicle Article - March 15, 2010 - Police waited 2 months to investigate lab tech.; Exhibit G - San Francisco Chronicle Article - March 15, 2010 - SF Police waited 2 months before drug lab probe.

¹¹ Exhibit E - San Francisco Chronicle Article - March 10, 2010 - Crime lab fallout: Drug defendants go free.

¹² *Id.*

¹³ Exhibit B - Copy of police incident report of Deborah Madden's arrest on October 2, 2007.

director Jim Mudge testified as a character witness. On February 19, 2008, the trial court permitted the San Mateo prosecutor to question witnesses about the internal investigation being conducted by Madden's employer.¹⁴ Madden was convicted of misdemeanor domestic violence and vandalism offenses on February 20, 2008.¹⁵

¹⁴ Exhibit J - Declaration of counsel.

¹⁵ Exhibit C - Criminal Case Docket - Deborah Jean Madden (front page only).

11. On May 9, 2008, Madden was given a suspended sentence and three years supervised probation to include the following conditions: 30 days county jail, 104 hours of domestic violence counseling, no use or possession of alcoholic beverages, submit to alcohol tests as directed, participate in education, rehabilitation or treatment program as directed, and no weapons.¹⁶
12. As a consequence of these developments, as of March 18, 2010, over 50 drug cases in the Public Defender's Office have been dismissed and numerous incarcerated individuals released. Per a news article released on March 18, 2010, over 180 drug cases in total have been dropped by the prosecution as a result of Madden's actions.¹⁷
13. Madden was arrested on March 3, 2010 for weapons charges.¹⁸ This constitutes a criminal offense and a violation of Madden's domestic violence probation.
14. Madden purportedly tested the alleged contraband in _____'s case.
15. Had trial counsel been aware of the mounting evidence regarding Madden's dishonesty, drug

¹⁶ Exhibit J - Declaration of counsel.

¹⁷ Exhibit H - San Francisco Chronicle Article - March 18, 2010 - S.F. police hope officers can do drug testing.

¹⁸ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician accused of skimming.

abuse, alcohol abuse, malfeasance, and moral turpitude, she would have advised _____ to proceed to preliminary and jury trial. Trial counsel would have filed all necessary motions to defend _____ against the charges.

1. _____'s motion is timely.

A defendant may seek to withdraw a guilty plea before judgment has been entered, or within six months after an order granting probation is made if entry of judgment is suspended.¹⁹ “Although section 1018 is limited on its face to the period before judgment, the courts have long permitted defendants to move to set aside the judgment as a means of allowing the defendant to withdraw the guilty plea after judgment.”²⁰

Here, _____ seeks to withdraw his guilty plea of _____. (example: _____'s guilty plea was required as a condition of continued participation in the Back on Track Program.) He was sentenced on _____ (i.e.: December 3, 2009) shortly after he was terminated from the Back on Track Program.

2. Good cause is shown because _____'s free judgment was overcome by his ignorance of a strong defense due to the state's failure to disclose exculpatory evidence. Because the state withheld evidence and _____'s consequent ignorance led him to plead guilty where he otherwise would not have done so, his plea should be ordered withdrawn.²¹

Penal Code section 1018 sets the standard on a motion for post-judgment plea withdrawal. Good cause for plea withdrawal includes mistake, ignorance, duress, fraud, or any other factor overcoming the exercise of free judgment.²² Good cause must be shown by “clear and convincing evidence”.²³ Good

¹⁹ Pen. Code § 1018.

²⁰ *People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1617.

²¹ Exhibit J - Declaration of counsel.

²² *People v. Superior Court (Giron)* (1974) 11 Cal.3d 793, 797; accord *People v.*

cause must be liberally construed to promote justice.²⁴

The court has discretion to grant the motion after considering all factors and may take into account material information as to which the accused made erroneous assumptions.²⁵ Appellate courts have frequently found discretion abused.

Caban (1983) 148 Cal.App.3d 706.

²³ *People v. Urfer* (1979) 94 Cal.App.3d 887, 892; *People v. Huricks* (1995) 32 Cal.App.4th 1201, 1207.

²⁴ Pen. Code § 1018.

²⁵ *Giron, supra* at 797.

The California Supreme Court has held that a guilty plea of guilty is not knowingly and intelligently made when a defendant does not have knowledge of a potentially meritorious defense prior to entering the plea.²⁶ “Where the facts establish that counsel was ignorant of the facts or the law and it appears that such ignorance caused the withdrawal of a crucial defense, his client is entitled to relief.”²⁷

Prosecution suppression of evidence can also require withdrawal of a plea.²⁸

*United States v. Ruiz*²⁹ is generally relied upon by the prosecution for the proposition that impeachment evidence will never support the withdrawal of a plea, but this misapplies *Ruiz*. *Ruiz* is a federal habeas case: the standard on habeas is whether any one juror’s assessment of the case would have been affected.³⁰ So *Ruiz* controls only where the challenge is on federal constitutional grounds, not statutory ones, and where the evidence is limited to impeachment.³¹

²⁶ *People v. Harvey* (1984) 151 Cal.App.3d 660, 668-671; see also *In re Williams* (1969) 1 Cal.3d 168, 177.

²⁷ *People v. Stanworth* (1974) 11 Cal.3d 588,611 (overruled on other grounds in *People v. Martinez* (1999) 20 Cal.4th 225).

²⁸ *People v. Dena* (1972) 25 Cal. App. 3d 1001.

²⁹ *United States v. Ruiz* (2002) 536 U.S. 622.

³⁰ *United States v. Price* (9th Cir. 2009) 566 F.3d 900, 914.

³¹ *In re Miranda* (2008) 43 Cal. 4th 541, 581-582; see also n.6.

Here, the state statute controls; section 1018 requires the plea be withdrawn if any factor overcomes defendant's free will in deciding to plead guilty. Here, the State's failure given *Brady* materials about the nature of the item that ____ allegedly possessed goes to an essential element and, as noted in the declaration of Counsel and defendant; specifically affected his decision to plea and overborne his will.

Moreover, *Ruiz* involved a unique situation; it was almost a declaratory judgment. Ruiz was offered a "fast track" plea bargain, if she waived her right to *Brady* impeachment material, she would get a discounted sentence (2 levels on the guidelines would be dropped);³² she refused the offer but eventually pled without an agreement resulting in a worst sentence (government opposed reduction of the same two levels), due to her failure to plea immediately.³³ The real issue was the constitutionality of this coercive system. It was held the fast-track system used through the federal criminal plea bringing system was not a per se constitutional violation.³⁴

Ruiz pointed to no impeachment materials that the state failed to discover. So, the Supreme Court was left to speculate with such a record as to the value of an unknown bit of evidence. The Court held that because impeachment could be minor or major, that a general waiver in itself does not show that the plea was involuntary, because if the *Brady* material was purely impeachment it was a trial issue and did not go to the voluntariness of the plea.³⁵ But, the Court, rightfully left open this avenue depending on the

³² *Ruiz, supra*, 536 US at 625.

³³ *Id.* at 626.

³⁴ *Ruiz, supra*, at 6.

³⁵ *Id.* at 630

type of impeachment: “It is particularly difficult to characterize impeachment information as critical information of which the defendant must *always* be aware prior to pleading guilty *given the random way in which such information may, or may not, help a particular defendant. The degree of help that* impeachment information can provide *will depend* upon the defendant's own independent knowledge of the prosecution's potential case—a matter that the Constitution does not require prosecutors to disclose.”³⁶ (Emphasis added.)

³⁶ *Id.* at 630.

This language left open the possibility and signals a recognition that a failure to disclose particularly important impeachment, as is the case here, might trigger a finding that a plea was involuntary.³⁷

Here, independent of any federal *Brady* requirements, the withholding requires relief because it violated state discovery requirements. In *People v. Ramirez*, the appellate court did not even address constitutional grounds in holding that the pre-preliminary hearing guilty plea was to be withdrawn due to the state's failure to disclose exculpatory evidence under section 1018.³⁸ The *People v. Dena* court also relied only on section 1018 in deciding that a plea ought to have been set aside where the state suppressed favorable evidence.³⁹

Moreover, while the impeachment value of the evidence is high, the withheld information goes beyond Madden's veracity and suggests a systemic problem with the lab itself, casting doubt on chain of custody and undermining the controlled substance element of any narcotics charge. This material evidence includes Madden's domestic violence arrest, trial and conviction, tampering with drug evidence, alcohol and drug use, allegations of "sloppy" work at the crime lab, and internal investigations by her employer. Had _____ and his counsel known about this favorable evidence, he would have developed it to the maximum extent permitted by law. Because _____ was not informed of this material evidence, he was wholly ignorant of independent evidence supporting his defense. These discovery violations overcame _____'s free judgment, and he should be allowed to withdraw his

³⁷ *United States v. Ruiz*, *supra*, 536 U.S. at 633 (Thomas, J. concurring but disagreeing with the eight others in indicating that he type of impeachment evidence might make a difference).

³⁸ *People v. Ramirez* (2006) 141 Cal.App.4th 1501.

³⁹ *People v. Dena* (1972) 25 Cal.App.3d 1001.

plea.

The 2006 *Ramirez* case is instructive.⁴⁰ There, the prosecution failed to disclose a supplemental police report, and Ramirez argued that his ignorance of this report materially affected his decision to accept the plea agreement. The Court of Appeal found that he had made a sufficient showing, and that the trial court abused its discretion in denying his motion to withdraw.

Ramirez pleaded no contest because of his mistaken belief that “there was no favorable evidence to my case, that I had no way to fight my case, that I would lose the case and that I could get over 20 years in prison.”⁴¹ In reality, however, the police had identified a witness who could have testified in Ramirez’s favor as to a carjacking charge. Ramirez’s trial counsel also submitted a declaration, which stated that the undisclosed police report, “would have affected my evaluation of the case, and would have altered my advice to Mr. Ramirez regarding whether he should accept the plea bargain agreement. I would have advised Mr. Ramirez to go forward with the preliminary hearing before deciding whether or not to accept the plea bargain offer.”⁴²

In addition, the *Ramirez* court made clear that the new information did not have to incontrovertibly exonerate Ramirez in order to show that it “materially affected” his decision to plead guilty: “The supplemental report identified new defense witnesses, potentially reduced appellant’s custody exposure, and provided possible defenses to several charges, thereby casting the case against him in an entirely different light.”⁴³

⁴⁰ *People v. Ramirez* (2006) 141 Cal.App.4th 1501.

⁴¹ *Ramirez, supra*, 141 Cal.App.4th at 1508.

⁴² *Ibid.*

⁴³ *Ibid.*

The withheld evidence here would cast a narcotics case “in an entirely different light,” and materially affect both _____’s decision to plead guilty and trial counsel’s judgment on whether a plea bargain was advisable.

Since Madden’s arrest on October 2, 2007, the prosecution was in constructive possession of material evidence that should have been disclosed to _____ which was critical to his defense. Madden’s arrest for domestic violence itself is only the first piece of evidence which should have been disclosed to _____. Numerous other events flowed from Madden’s arrest which would have significantly impacted on his ability to defend himself at a preliminary hearing and at trial had the evidence been disclosed by the prosecution:

- Madden had been drinking during the domestic violence incident;
- Madden testified in her defense;
- James Mudge, Director of the San Francisco Crime Lab, testified as a character witness for Madden, and was questioned about an internal investigation being conducted by SFPD about Madden;
- Madden was convicted of domestic violence and vandalism;
- Madden was on probation at the time of _____’s plea. She was ordered to serve jail time, to participate in alcohol counseling, and to abstain from using alcohol.
- Madden was arrested on March 3, 2010 for violating the terms of her probation when police discovered a gun in her home after a search pursuant to a warrant.

In addition to all of the events surrounding Madden’s domestic violence case, _____ has become aware through news accounts that the integrity and reliability of the crime lab’s testing may have been undermined by sloppy work and Madden’s admitted drug tampering and consumption:

- 1) Several lab technicians suspected that someone had been stealing evidence and a supervisor noted apparent tampering with the packaging of drug evidence;
- 2) An investigation followed which specifically linked Madden to missing drugs in at least 6 cases;

- 3) Police believe that Madden may have testified in some of these six cases and may have perjured herself;
- 4) Madden admitted to consuming cocaine from five samples of drug evidence;
- 5) Madden's own sister notified the crime lab on December 16, 2009 that she had found what appeared to be a lab vial of cocaine at Madden's home in San Mateo. Despite notifying the crime lab of this discovery on December 16, 2009, police did not commence a criminal probe until two months later.
- 5) Madden leveled charges that the lab drug-testing process was sloppy and that technicians consistently lost or mishandled evidence;
- 6) In addition, an audit by the American Society of Crime Laboratory Directors shows that the San Francisco Crime Lab does not have a secure chain of custody for evidence, fails to keep detailed case records and does not meet the standards of cleanliness.

All of the evidence pertaining to the domestic violence arrest, trial and conviction would have been used to impeach Madden during a preliminary hearing and/or jury trial. In addition, information regarding the internal investigation being conducted by Madden's employer in February 2008, as well as Madden's alcohol and drug abuse, would also have been used to impeach Madden's credibility and undermine her test results. Finally, any information regarding "sloppy," "lost," and "mishandled" drug evidence which Madden alleged about the crime lab, would have undermined the reliability and integrity of all test results from the crime lab.

Had _____ known about this evidence, he would not have pled guilty to the charge.⁴⁴ He would have litigated his case through jury trial. In addition, _____'s trial counsel would have

⁴⁴ See attached Declaration of _____.

advised _____ to proceed to preliminary hearing and to jury trial.⁴⁵

⁴⁵ *See attached* Declaration of Counsel.

In the early case of *McCrary*, the Supreme Court emphasized the need to read the section broadly: “[W]hen there is reason to believe that the plea has been entered through inadvertence, and without due deliberation, or ignorantly, and mainly from the hope that the punishment, to which the accused would otherwise be exposed, may thereby be mitigated, the Court should be indulgent in permitting the plea to be withdrawn.”⁴⁶

A similar view was expressed in the 1943 *McGarvy* case: “[T]he withdrawal of a plea of guilty should not be denied in any case where it is in the least evident that the ends of justice would be subserved by permitting the defendant to plead not guilty instead; and it has been held that the least surprise or influence causing a defendant to plead guilty when he has any defense at all should be sufficient cause to permit a change of plea from guilty to not guilty”⁴⁷

Conclusion

When _____ pled guilty, he did not know that there was any independent evidence in support of his defense. The withheld evidence would have gone to negate the controlled substance element, making a conviction questionable at best, and _____ would not have pled guilty if he had known of it. _____’s free judgment was overcome when he entered his plea because the state failed to disclose exculpatory material. Justice requires that _____ be permitted to withdraw his plea.

Dated: _____, 2010

Respectfully submitted

⁴⁶*People v. McCrary* (1871) 41 Cal. 458, 462.

⁴⁷*People v. McGarvy* (1943) 61 Cal.App.2d 557, 564.

Attorney for _____

Proof of Service

I, the undersigned say:

I am over eighteen years of age and not a party to the above action. My business address is

_____, San Francisco, California 94103.

On _____, 2010 , I personally served the attached Motion to withdraw an admission of a probation violation on the following parties:

OFFICE OF THE DISTRICT ATTORNEY
City and County of San Francisco
Attention: _____
Assistant District Attorney
850 Bryant Street
San Francisco, CA 94103

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

Executed on March ___, 2010, at San Francisco, California.

Exhibit J
Declaration of Counsel

I, the undersigned, state:

I am the attorney of record for _____.

_____ was a defendant in felony court number_____.

I am informed and believe that on _____, _____ entered a guilty plea to one count of Health and Safety Code section _____. (Include appropriate procedural facts here, i.e.: Judgment was deferred at that time to give _____ an opportunity to complete the Back on Track Program (BOT).

I am informed and believe that on _____, 2009, _____ was sentenced as follows: (set forth sentence, i.e.: imposition of sentence suspended, three years of formal probation, and credit for time served, among other conditions.)

From March 10 through 18, 2010, I read newspaper accounts concerning a SFPD drug test technician named Deborah J. Madden who allegedly absconded with certain drug samples during her work at the lab. Madden left her job in December 2009 and a lab audit conducted during the same month discovered the tampering with samples. “That review was triggered when other technicians suspected someone had been stealing evidence and supervisor noted apparent tampering with the packaging of drug evidence, San Francisco Police Chief George Gascon said at a news conference” on March 9, 2010.⁴⁸ Specifically, the “investigation linked [Madden] to missing drugs in at least six cases in the latter part of 2009.”⁴⁹ Police officials said that Madden might have been summoned to testify in some of these six cases and may have perjured herself about the evidence.⁵⁰ According to authorities, “Madden was supposed to vouch for the

⁴⁸ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician accused of skimming.

⁴⁹ *Id.*

⁵⁰ *Id.*

weight and purity of seized drugs but instead used the cocaine.”⁵¹ The tampering, theft and usage of drugs, as well as the alleged perjury, would be a basis for impeachment of a witness at trial in terms of credibility. In addition, it is reasonably probable that such evidence would undermine confidence in the jury verdict.

I am informed and believe that newspaper accounts indicate that Madden was interviewed as part of an investigation into the missing drugs where she “leveled charges of her own about the lack of control over drug evidence. One official said Madden called the drug-testing process at the lab ‘sloppy’.”⁵² Madden also indicated that lab technicians “consistently lost or mishandled evidence.”⁵³ These statements call into question the integrity and reliability of all crime lab results.

I am informed and believe that according to news reports, in her two-hour statement to police, Madden told police that she began to use cocaine in October of 2009 and admitted to consuming cocaine from five samples of drug evidence.⁵⁴

⁵¹ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician accused of skimming.

⁵² *Id.*

⁵³ Exhibit F - San Francisco Chronicle Article - March 15, 2010 - Police waited 2 months to investigate lab tech.

⁵⁴ *Id.*

I am informed and believe that newspaper accounts also indicate that “police released an audit by the American Society of Crime Laboratory Directors that shows the San Francisco lab does not have a secure chain of custody for evidence, fails to keep detailed case records and does not meet standards of cleanliness. The audit found that the lab is routinely underfunded and understaffed and has to rely on overtime to fulfill its mission.”⁵⁵

⁵⁵ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician accused of skimming; Exhibit I - ASCLD/LAB Inspection Report - San Francisco Police Department Criminalistics Laboratory (Inspected: November 17-20, 2009).

I am informed and believe that newspaper accounts indicate that Madden's sister informed the crime lab on December 16, 2009 that she found what appeared to be a lab vial of cocaine at Madden's home in San Mateo. Despite informing the crime lab in December of last year, the San Francisco police took two months to launch a criminal probe into Madden's suspected theft of drug evidence.⁵⁶ In addition, newspaper accounts indicate that Madden has been in treatment recently for drug and alcohol use.⁵⁷

I am informed and believe that newspaper accounts also indicate that this long-time employee suffered a domestic violence conviction,⁵⁸ which would be a basis for impeachment of a witness at trial in terms of credibility.

⁵⁶ Exhibit F - San Francisco Chronicle Article - March 15, 2010 - Police waited 2 months to investigate lab tech.; Exhibit G - San Francisco Chronicle Article - March 15, 2010 - SF Police waited 2 months before drug lab probe.

⁵⁷ Exhibit E - San Francisco Chronicle Article - March 10, 2010 - Crime lab fallout: Drug defendants go free.

⁵⁸ *Id.*

I am informed and believe that Madden was arrested on October 2, 2007 for domestic violence and assault charges.⁵⁹ Alcohol was involved in this incident of domestic violence. Madden testified in her defense and the Director of the San Francisco Crime Lab, Jim Mudge, testified as a character witness. On February 19, 2008, during the trial, the court granted the San Mateo prosecutor's request to explore the internal investigation being conducted by Madden's employer at that time on cross-examination of Mudge or during direct examination of a rebuttal witness. Madden was convicted of misdemeanor domestic violence and vandalism offenses on February 20, 2008.⁶⁰ I have reviewed a copy of the docket which details what occurred at Madden's trial and provides a detailed report of all of Madden's sentencing conditions. The docket also indicates that Mudge testified for Madden and that the prosecutor was allowed to cross-examine him regarding the internal investigation which was occurring at that time by Madden's employer.

I am informed and believe that Madden was sentenced on May 9, 2008 as follows: Imposition of sentence suspended, 3 years supervised probation, 30 days county jail, 104 hours of domestic violence counseling, abstain from the use and possession of alcoholic beverages, submit to alcohol tests when directed by probation officer, participate in any education, rehabilitation or treatment program as directed by probation officer, and not to possess any weapons, among other conditions.

I am informed and believe that as a consequence of Madden's apparent misfeasance, as of March 18, 2010, over 50 drug cases in the Public Defender's Office have been dismissed and numerous individuals incarcerated because of those cases have been released from custody. Per a news article released on March 18, 2010, over 180 drug cases in total have been dropped by the prosecution as a result of Madden's actions.⁶¹

⁵⁹ Exhibit B - Copy of police incident report of Deborah Madden's arrest on October 2, 2007.

⁶⁰ Exhibit C - Criminal Case Docket - Deborah Jean Madden (Front page only).

⁶¹ Exhibit H - San Francisco Chronicle Article - March 18, 2010 - S.F. police hope officers can do drug testing.

I am informed and believe that Madden was arrested on March 3, 2010 for weapons charges after a search of her home pursuant to a warrant.⁶² This arrest constitutes another criminal offense and a violation of the terms of her domestic violence probation.

I am informed and believe that in _____'s case, this same lab technician tested the alleged contraband.

I have obtained five newspaper accounts of the status of this Madden investigation and attach these to this motion, requesting judicial notice of the on-going investigation and the consequences in terms of dismissal.

_____ would not have entered a guilty plea had the prosecution disclosed the exculpatory and impeachment evidence that it had in its constructive possession. Had _____ been aware of this exculpatory and impeachment evidence, he would have proceeded to preliminary hearing and jury trial. As his attorney, I would have advised him to proceed to his preliminary hearing. If he was held to answer, I would have filed a Penal Code section 995 motion challenging the holding order. If that was denied, I would have filed a writ with the Court of Appeal. If that was denied, I would have advised _____ to proceed to jury trial.

The foregoing is true and correct, except those portions made upon information and belief and I am informed and believe them to be true and correct, and made under penalty of perjury this ____th day of March, 2010 in the City and County of San Francisco, State of California.

(Name of Attorney)

⁶² Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician accused of skimming.

Exhibits (Attached to Motion to Withdraw Plea)

Exhibit A: CMS printout in Court Number 2357894/209049.

Exhibit B: Copy of police incident report of Deborah Madden's arrest on October 2, 2007.

Exhibit C: Criminal Case Docket - Deborah Jean Madden (Front page only).

Exhibit D: San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician accused of skimming.

Exhibit E: San Francisco Chronicle Article - March 10, 2010 - Crime lab fallout: Drug defendants go free.

Exhibit F: San Francisco Chronicle Article - March 15, 2010 - Police waited 2 months to investigate lab tech.

Exhibit G: San Francisco Chronicle Article - March 15, 2010 - SF Police waited 2 months before drug lab probe.

Exhibit H: San Francisco Chronicle Article - March 18, 2010 - S.F. police hope officers can do drug testing.

Exhibit I: ASCLD/LAB Inspection Report - San Francisco Police Department Criminalistics Laboratory (Inspected: November 17-20, 2009).

Exhibit J: Declaration of counsel.

Exhibit K: Declaration of defendant, _____.

Exhibit K

Declaration of Counsel, _____

I, the undersigned, state:

I am the defendant in Court Number _____.

I decided to plead guilty in my case not only because (i.e.: I was going to be allowed to do the Back on Track program), but also because I did not believe that I was going to be able to defend against the charges. My attorney also indicated to me that defending against my charges was going to be extremely difficult and that (i.e. Back on Track was a good offer in light of the evidence). I felt that I had no choice but to plead guilty and attempt to complete the Back on Track program

If I had known about the fact that the lab technician had been arrested for domestic violence charges and had been convicted, I would not have plead guilty to the charges in my case. I also would have followed my attorney's advise not to plead guilty.

[EXPAND WITH MORE INFORMATION]

The foregoing is true and correct, except those portions made upon information and belief and I am informed and believe them to be true and correct, and made under penalty of perjury this ____th day of _____, 2010 in the City and County of San Francisco, State of California.
