SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

In re CHARLES MURDOCH, Petitioner On Habeas Corpus.	Case No. NA020621 **Dept.: 100** **Judge:**

PETITION FOR WRIT OF HABEAS CORPUS
MEMORANDUM OF POINTS AND AUTHORITIES;
SUPPORTING EXHIBITS

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In re CHARLES MURDOCH, Petitioner On Habeas Corpus.	Case No. NA020621 **Dept.: 100** **Judge:**

TO THE HONORABLE JUDGE OF THE LOS ANGELES COUNTY SUPERIOR COURT:

Petitioner, Charles Murdoch, by and through his counsel, respectfully petitions this court for a writ of habeas corpus and by this verified petition sets forth the following facts and causes for the issuance of said writ:

I.

Petitioner is presently restrained of his liberty in state custody based upon his conviction rendered by the Los Angeles County Superior Court in case numbered NA020621, as Petitioner is currently in state custody for the present offense. (*In re Jones* (1962) 57 Cal.2d 860.)

II.

This petition is being filed in this Court pursuant to its original habeas corpus jurisdiction. (Cal. Const., Art. VI, § 10.)

III.

No other appellate proceedings exist with regard to the present confinement. No other petitions are pending in any other court with respect to this judgment.

IV.

Petitioner's conviction in case no. NA020621 is unlawful because he is in fact innocent. Through the present petition and attached exhibits, Petitioner presents: 1) Newly discovered evidence that the State suppressed which is material and exculpatory in violation of *Brady*; 2) Evidence that the State "lost," destroyed or failed to maintain potentially exculpatory evidence under *Trombetta/Youngblood*; and, 3) Evidence that the State presented false evidence and failed to correct the false evidence under *Napue*. The suppressed exculpatory evidence attached to the present petition includes but is not limited to:

- Material evidence of officer notes related to the Time Out Bar robbery, which took place one hour after the Horse Shoe Bar robbery, in Long Beach, involving the same suspects and investigated by the same Long Beach Police Department detectives – Officers Pavek and MacLyman. (Exhs.A, B.)
- Material evidence identifying two suspects based upon the latent fingerprints discovered at the Horse Shoe Bar in 1983. (Exhs. C, D.)
- Material evidence that Petitioner's co-defendant, Dino Dinardo, acted as an informant in a prior case in Long Beach and provided Long Beach Police with false evidence identifying Raymond Barlow in exchange for leniency. (Exh. H, I, J.)
- Material evidence of Dino Dinardo's CLETS/Probation Officer Report which included numerous prior arrests and convictions for theft offenses that were not provided to Petitioner in pre-trial discovery, including the case in which Dinardo received leniency from the Long Beach Police in exchange for false evidence implicating Raymond Barlow. (Exh. I.)
- Material evidence that Officer Pavek presented false evidence to the jury through his testimony which included suppression of the Time Out Bar robbery and related evidence, as well as false evidence. (Exh. P.)
- Material evidence of the Long Beach District Attorney's repeated offers of leniency to Dinardo in exchange for testimony implicating Petitioner were part of a systemic informant program – as reflected in the L.A. Grand Jury Report, the Thomas Goldstein case (as well as numerous

other wrongful convictions derived from the Long Beach informant program), and as recently exposed in Orange County. (Exhs. R, S, II.)

Petitioner provides this summary of the claims, and incorporates the attached original habeas petition. The evidence in support of the claims in this petition are set forth in full in the body of the petition and the accompanying points and authorities, as well as the attached Exhibits.

Along with the discovery of new evidence that the State suppressed material exculpatory evidence prior to, during and after trial. In addition to this *Brady* evidence, there were significant "irregularities" with the original investigation. Initially, Petitioner notes that the State did not maintain evidence related to the Time Out Bar robbery investigation that happened an hour after the Horse Shoe Bar robbery, involved the "same" Latino suspects, took place approximately two miles away, and was being investigated by the same Long Beach Police detectives. In addition, the Long Beach Police detectives Pavek and MacLyman shelved the bar robbery investigations within days of the crimes back in 1983. The lack of investigation at the time of the serious, violent crimes in the center of Long Beach, coupled with the seeming contradiction between initial evidence and the cold case evidence, raises additional, significant questions regarding the credibility of the investigation. Finally, the State's reliance upon false testimony from Officer Pavek and unreliable informant testimony, instead of actual evidence, violated petitioner's due process under *Napue*. Ultimately, the State's pattern of suppressing and destroying potentially exculpatory evidence from the beginning of the investigation the case raises serious questions – not just with respect to the integrity of Petitioner's conviction - but as to the integrity of the State.

V.

This petition is being filed in this Court, requesting relief from the conviction in Los Angeles County Superior Court No. NA020621, the conviction this petition challenges as unlawful. Petitioner has no plain, speedy, or adequate remedy at law, save

this petition, since the allegations of this petition involve matters outside the record, to wit, the matters contained in the exhibits attached thereto.

VII.

By this reference, the accompanying memorandum of points and authorities and exhibits are made part of this petition as if fully set forth herein. Petitioner's claims under this petition will be based on this petition, the accompanying memorandum of points and authorities, the exhibits attached thereto, and any further material to be developed at any future hearing which may be ordered.

PRAYER

WHEREFORE, Petitioner respectfully requests that this Court:

1. Order Respondent to Show Cause why Petitioner is not entitled to the relief sought;

2. Order appointment of present *pro bono* counsel to represent Petitioner for the present proceedings, as Petitioner is indigent;

3. Order the pre-trial letter from Dino Dinardo and the ex parte communications between Judge Sheldon and members of the District Attorney's Office (RT 214) unsealed;

4. Grant Petitioner subpoena authority for the request of documents pertaining to the Time Out Bar robbery, relevant misconduct of law enforcement officers, informant information related to Dino Dinardo and or lists maintained by the District Attorney's Office in Long Beach and Orange County;

5. Order an evidentiary hearing for the presentation of any disputed factual matters;

6. After full consideration of the issues raised in this petition, issue a writ ordering the court to vacate the judgment of conviction in the Los Angeles County Superior Court No. NA020621, based upon the manifest constitutional violations in this case as well as Petitioner's actual innocence;

7. Declare Petitioner actually innocent; and,

8. Grant Petitioner such other and further relief as is appropriate in the interests of justice.

Dated: April 30, 2024

Respectfully submitted,

Jennifer M. Sheetz

VERIFICATION

I, Jennifer Mikaere Sheetz, state:

I am an attorney admitted to practice before the courts of the State of California, and have my office in the City of Mill Valley, California. I am *pro bono* attorney for Petitioner herein and am authorized to file this Petition by virtue of my representation of Petitioner.

I am verifying this petition because the facts herein are within my knowledge as Petitioner's attorney, with the exception of those facts specifically set forth in the exhibits which are attached to this petition.

I have read the foregoing Petition for Writ of Habeas Corpus and verify that all the facts alleged herein are supported by citations to the record in *People v. Charles Murdoch*, and are supported by declarations and the exhibits attached hereto.

I certify under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed at Mill Valley, California on April 30 , 2024.

Jennifer M. Sheetz

I. STATEMENT OF THE CASE

On December 27, 1994, Charles Franklin Murdoch and codefendant, Dino Dinardo, were charged by felony information with one count of murder (Pen. Code § 187, subd. (a)), and one count of attempted, willful, deliberate, premeditated murder (Pen. Code § 664/187, subd. (a)), with the allegation that both charges constituted serious felonies (Pen. Code § 1192.7). (Clerk's Transcript [CT] 113-115.) It was also alleged that Petitioner committed the murder while engaged in the commission of a robbery and a burglary, constituting two special circumstances (Pen. Code § 190.2, subd. (a)(17)). (CT113-115.) It was further alleged that Petitioner personally used a firearm in the commission of the murder (Pen. Code § 12022.5, subd. (a)), and that Petitioner acted as the principal (Pen. Code § 12022, subd. (a)(1)) in both offenses. (CT 113-115.)

Petitioner moved to Traverse the *Ramey* warrant and suppress the identification evidence as the fruit of the illegal arrest. (CT 239.) In preparation to appear as a witness on the Traverse, Petitioner's public defender conflicted out of the case, and conflict counsel was appointed. (CT 284-286.) The Traverse was based primarily upon Petitioner's evidence that Detective Pavek had made false statements and relied upon false evidence in his declaration to support the warrant. (See Exhs. Y, Z, EE.)

Judge Sheldon severed the case, finding that Dinardo's trial should not be delayed. (CT 286.) Prior to trial, Dinardo filed a Motion to Suppress his confession as involuntary and coerced. (Exh. G.) Dinardo proceeded to trial and was convicted of first degree felony murder, on July 12, 1995. (Exh. AA.) On September 20, 1995, Judge Sheldon denied probation and sentenced Dinardo state prison for 25 years to life. (Exh. AA.) As recounted by the Ninth Circuit in its 2010 decision, Judge Sheldon provided Dinardo with the following offer at his sentencing:

> I would like to do something different, Mr. Dinardo. You've probably been told it's a set sentence. I have to give it. The only thing I can say is I have 90 days to change the sentence if anything changes in the way of your mind or the District

> Attorney's mind insofar as trying to resolve this with something less than the set sentence.
>
> Frankly, from the standpoint of the other trial, unless the District Attorney has something more, I just wonder without your assistance where they're going; but maybe sometimes cases develop at the last minute. But, to my knowledge, I don't know of any other evidence. They have a very difficult case without your assistance.
>
> But that's actually between attorneys, and it's not the judge's province.
>
> I was hoping there would be a resolution so that I could sentence you to something less, which I would prefer to do from everything about this case, especially the length of time and all the years that you lived what appears to be a law-abiding life before you got arrested.
>
> Dinardo subsequently did testify and, in return, received a reduction of his conviction to voluntary manslaughter and a reduced sentence of 12 years' imprisonment.

(*Murdoch v. Castro, supra*, 609 F.3d at p. 986.)

Ultimately, Judge Sheldon denied Petitioner's Traverse. (CT 306.) On December 14, 1995, Petitioner filed a Statement of Disqualification, asking for Judge Sheldon to be recused. Judge Sheldon ruled the motion untimely, summarily denied it and ordered it stricken from the record. (CT 309.)

True to his word, Judge Sheldon recalled Dinardo's judgment and conviction for first degree murder on or about December 26, 1995. District Attorney Carbaugh represented the District Attorney's Office at the "recall" of Dinardo's first degree murder conviction and 25 year-to-life sentence. (Exh. AA.) Pursuant to the D.A.'s offered disposition, Judge Sheldon found Dinardo guilty of manslaughter and sentencing him to state prison for a term of 12 years, with credit for 818 days. (Exh. AA.)

On December 28, 1995, a jury found Petitioner guilty of first degree murder with robbery special circumstances in violation of California Penal Code sections 187(a) and

190.2(a)(17) and attempted premeditated murder under section 664/187(a). (CT 391, 393-394.) The jury further found true the alleged enhancement, that Petitioner was the principal armed with a firearm under section 12022(a)(1). (CT 392, 394.)

On February 16, 1996, Petitioner filed a Motion for a New Trial, based upon several grounds, including Judge Sheldon's denial of Petitioner's Motion to Recuse the judge following his stated offer of leniency to Dinardo during sentencing. (CT 396-404.) In addition, Petitioner's motion cited the suppression of Dinardo's statement (a "letter" that was intended for Petitioner's attorney) under Judge Sheldon's curious finding of "attorney-client privilege." Finally, Petitioner challenged his conviction based upon Judge Sheldon's denial of his request for a continuance when he learned that Dinardo would be State's witness in exchange for leniency the following day at trial. (CT 396-404.) The motion was denied.

Petitioner was sentenced to state prison for life without the possibility of parole, plus 1 year. (CT 414-416.) Judgment was pronounced on February 22, 1996. (CT 414, 417.) On February 23, 1996, Petitioner filed a timely notice of appeal. (CT 414, 417.) Petitioner raised several issues not presented here in his direct appeal. In an unpublished opinion, filed on March 25, 1998, the California Court of Appeal, Second Appellate District, Division 3, affirmed Murdoch's convictions and sentence and denied Murdoch's petition for writ of habeas corpus, considered concurrently with his direct appeal. (*People v. Murdoch*, COA Nos. B100877, B112047.) The California Supreme Court denied review on July, 8, 1998.

Petitioner subsequently filed a federal petition, raising the same claims in the United States District Court, Central District Court of California, on July 6, 1999. The district court initially denied Petitioner's claims. Petitioner appealed the denial to the Ninth Circuit Federal Court of Appeal. In *Murdoch v. Castro* (9th Cir. 2004) ("*Murdoch I*"), the Ninth Circuit Court remanded Petitioner's claim for review of the sealed letter from Dinardo which was not admitted into evidence or presented to Petitioner prior to

trial. Ultimately, the Ninth Circuit denied Petitioner's request for relief following *en banc* review, on June 21, 2010.

Following the final denial, Petitioner filed two *pro se* post-conviction discovery motions under 1504.9(a), in Long Beach Superior Court. In his motions, Petitioner also requested that the Court appoint counsel. On December 2, 2013 and January 21. 2014, Petitioner's motions were denied. In response to the requests, Petitioner received 131 pages of discovery from the Long Beach District Attorney's Office.

Present counsel entered the post-conviction case on a *pro bono* basis on or about 2022. (See Exh. CC.) On or about October 18, 2022, present counsel filed a Motion for Discovery under Penal Code section 1054.9(a). This request was ultimately processed as an Informal Discovery Request by the Los Angeles District Attorney's Office Discovery Unit, rather than the Long Beach District Attorney's Office. The Discovery Unit provided discovery on two separate occasions, with the second discovery being delivered to counsel on or about May 2023. In all, the discovery consisted of approximately 2,300, pages and a recording of the taped, second portion of the interrogation of Dino Dinardo (the entire initial interrogation of Dinardo was not taped). Much of the material provided by the Los Angeles District Attorney's Office Discovery Unit consisted of documents that Petitioner did not have access to at the time of his trial, nor any time subsequent until it was provided in 2023. This petition follows.

II. FACTUAL AND PROCEDURAL BACKGROUND[1]

On May 17, 1983, the underlying offense took place at the Horse Shoe Bar in Long Beach, at approximately 9:00 p.m. The initial police reports and statements from witnesses all, universally, identified the suspects as "Mexican males." (Exh. A.) The

[1] Petitioner requests that the Court take judicial notice of the record of the proceedings in Petitioner's underlying case before Los Angeles County in case no. NA020621, as set forth in the transcripts of the record on appeal and the Court's decision affirming Petitioner's conviction in *People v. Charles Murdoch*, No. B100877 . Petitioner also requests that the Court take judicial notice of the record of the post-conviction discovery proceedings related to the underlying case, as set before the Los Angeles County Superior Court.

Long Beach Police Department reported that the Horse Shoe Bar robbery on May 17, 1983, was committed by 2 or 3 "Mexican" males. (Exh. A.)

The Long Beach Police Department radio call log reported, "total of 3 M.M." (Mexican males). (Exh. GG.) The Long Beach Police Department "Teletype" reported "2 Male Mexicans." (Exh. GG.) The Orange County Dispatch and L.A. County Dispatch both reported "2 M.M." were responsible for the robbery. (Exh. GG.)

The Long Beach Police Department issued a press release reporting that "Three Mexican Males" robbed the Horse Shoe Bar at gun point and then an hour later robbed the Time Out Bar, both in Long Beach. (Exh. A.) A newspaper article from May 18, 1983, quoted Long Beach Police Department, Lieutenant Jim Reed, stating that both bars were robbed by the same three "Mexican male" individuals. (Exh. A.) In a Long Beach Police Department press release, Officers Pavek and MacLyman were identified as the investigating officers of that robbery as well. (Exh. A.)

Lab Technician A. Perez processed the Horse Shoe Bar on the night of the robbery and lifted fingerprints from the counter and cash register. (Exhs. C, D.) Perez identified Louie Rodriguez and Jessie Alvarez as possible suspects on the latent fingerprint evidence tag from the crime scene, filed at 22:30 on the night of the robbery. (Exh. D.) Handwritten names were later added to the form. (Exh. D.) Eight years later, on or about January 14, or 25, 1994, Dino Dinardo's name was added to the fingerprint file. (Exhs. C, D.)

Witnesses recounted either two or three "Mexican men" entered the bar and held it up at gun point. (See Exh. A.) Dyanne Spence was the bartender at the time of the incident. Spence was talking with bar patron Edward Snow, when her attention was drawn to a man pointing a gun at another patron, Robert Nantias. Spence heard a gunshot and saw that Nantias had been shot. She heard someone say, "This is a robbery." (RT 316-319.) On the night of the robbery, Spence described the gunman as "Latin American" looking. (RT 521.) Immediately after the robbery, Spence recalled that the robbery involved two individuals. (RT 453.) Two weeks after the robbery, Spence was

shown a line-up of photographs of potential suspects which included a photo of Petitioner and she was unable to identify any of the photos as resembling the suspects. (RT 347-348.)

Carol Halliburton was another witness who worked at the bar. On the night of the incident, Halliburton was off of work, sitting with her fiancé, Nantias, at the bar. (RT 548, 553.) She heard someone say, "Don't look at me," and she turned to see a man holding a sawed-off rifle. (RT 549.) It was then that Halliburton noticed Nantias slumped over. (RT 552-553.) Nantias died from the gunshot wound. (RT 422-423.) On the night of the incident, Halliburton described the man who shot Nantias as a "male Mexican." (RT 573.) Two weeks after the bar robbery, Halliburton was shown a photo line-up and failed to identify petitioner's photo as the perpetrator. (RT 573-575.)

James Hall was a patron inside the bar on the night of the robbery. He was stabbed three times during the course of the robbery. (RT 601, 602.) Hall described a "Latino looking person," as his assailant, who he saw out of the corner of his eye. (RT 604, 621.) Hall described the gunman as "Latino." (RT 604, 621.) Hall noted that it looked as though that person was holding a small handgun that could have been a .22, .25 or .38 caliber. (RT 602-603.) Hall was shown photographs before he attended a live line up, but he was unable to identify anyone who resembled either suspect. (610-611, 618.)

Edward Snow was another witness at the bar on the night of the robbery. (RT 622, 623.) He had been at the bar for several hours before the robbery occurred. (RT 623.) Snow saw two men involved in the robbery, but he did not see the person with the gun. (RT 625.) Someone came over the counter to the cash register. (RT 624.) He further testified that he heard loud shouting by the robbers, and he thought it sounded "Hispanic." (RT 626.) He put his head down and prayed he would not get shot. (RT 625.) The two men ran past Snow in different directions. (RT 625.)

Twelve years after the bar robbery, in March of 1994, Spence was shown a photographic line-up of potential suspects, including a photograph of Dino Dinardo and she was not able to identify Dinardo as a suspect. (RT 517-519, 904-905, 931, 959.)

Approximately six months later, on September 15, 1994, Spence attended line ups at the County Jail where she identified Petitioner and Dinardo for the first time as suspects. (RT 352, 358-359, 361-362.) At trial, Spence testified that she was certain of her identification of Petitioner, "[b]eyond a shadow of a doubt." (RT 373.) She said that she recognized his "piercing dark eyes," and claimed that he had been scaring her for years. (RT 318.)

In 1994, Officer Pavek showed Halliburton the same photograph line up that she had viewed on June 2, 1983. (RT 555, 575, 895-897, 928.) Halliburton was unable to identify Petitioner as a suspect on both occasions. (RT 928, 935-936.) Halliburton was also presented with Petitioner in an in a live line up in 1994, and she was unable to identify him then as well. (RT 935-936.) When shown photographic and live line ups with Dinardo, Halliburton similarly failed to identify Dinardo. (RT 900-901, 903.)

At trial, Halliburton testified that Petitioner looked similar to the robbery suspect with the rifle, based upon his "peculiar eyes" and the mustache. (RT 550-551.) When presented with the photo line-up, Halliburton did not pick Petitioner's photo, and she explained that she picked the photo which depicted a round face, eyes, mustache and "a hardened look" similar to the robbery suspect. (RT 561, 563.) When pressed as to her certainty, Halliburton responded, "It was so many years ago." (RT 579.)

Snow was never shown a photographic line up or an in person line up as a witness in the case. (RT 633.) During Petitioner's trial, Snow was asked if he recognized anyone in the courtroom whom he had seen the night of the robbery, and Snow remarked, "It's been 13 years. And I can't be positive." (RT 626.) When asked if anyone looked familiar, Snow suggested that Petitioner might have been the "one who came over the bar" (to empty the register). (RT 643.) Snow further offered that Petitioner's "eyes and nose" looked like the person who went over the counter. (RT 643.) At no time prior to this testimony had Snow ever suggested that he had specific facial recognition of one of the suspects. (RT 646.)

At Petitioner's trial, Spence testified to a different description of the suspects and events that took place twelve years prior. Spence described a third suspect at trial, but immediately after the robbery she only remembered two individuals. (RT 327, 452, 453, 455.)

The prosecution called Petitioner's brother, John Murdoch and Patrick Condon as witnesses. John Murdoch testified that he had been acquainted with Dinardo since the 1960's, when they were kids and lived in the same neighborhood. (RT 661-663.) John had not seen Petitioner in the same place as Dinardo since Petitioner was about 11 years old. (RT 664.) Moreover, John specifically stated that he had not seen Petitioner in Dinardo's company between 1980 and 1983. (RT 668.)

Condon testified that he had been friends with Petitioner since 1978. (RT 712.) Condon further testified that he knew Petitioner and Dinardo to be friends, as he had seen them together at Petitioner's residence between 1984 and 1985. (RT 712-714.) He also stated that he remembered seeing Dinardo with Petitioner at other locations, on approximately 10 other occasions in 1983. (RT 719-721.)

Prior to trial, Dinardo steadfastly claimed his innocence and challenged the admission of his confession to Detective Pavek and McMahon, as a coerced and involuntary statement made under duress. As in *Taylor v. Maddox*, Judge Sheldon ruled that the confession was voluntary and allowed the prosecution to use it against him at trial. (Sealed Transcript on Appeal; Exh. G.) Before trial, Dinardo wrote a statement which he intended for Petitioner and Petitioner's attorney. Instead, Dinardo's attorney withheld the letter. Judge Sheldon reviewed the letter and ordered it sealed. (See *Murdoch v. Castro* (9th Cir. 2010) 609 F.3d 983, 987, 997-998.) The existence of the letter was brought to light by the District Attorney the day before Dinardo testified as the State's primary witness. (See RT 702.) Judge Sheldon found the letter to be protected by attorney-client privilege, so it was never revealed to Petitioner or his counsel prior to trial. (See *Murdoch v. Castro, supra*, 609 F3d. at pp. 987, 997-998.)

Ultimately, Dinardo's own handwritten statement on notebook paper, is still under seal with the Long Beach Court, but the Ninth Circuit's reconstruction (in dissent) provides a summary:

> I would like to make a statement about the facts surrounding my arrest for robbery and murder. I was taking care of my young daughter when Long Beach police arrested me at my home in Berkeley. Two policemen, Detective Pavek and his partner, took me to the Berkeley Police Department and interviewed me. I wanted to get back to my daughter as I worried about her welfare. At that time, Detective Pavek coerced a statement from me and promised not to charge me if I made a statement that Charles Murdoch participated in the crime. But, I do not actually know Mr. Murdoch, although I know his brother. Mr. Murdoch and I did not commit any crime.

(*Murdoch v. Castro* (9th Cir. 2007) 489 F.3d 1063, 1071 (Bright, J., dissenting).

At trial, Petitioner was not able to cross-examine Dinardo regarding the letter or the suppression motion, as he did not have access to the substance of either. Dinardo testified that he knew Petitioner in the early 1980's, and he was pretty sure that he had known him in the 1970's, when they were kids. However, Dinardo did not know Petitioner by name. (RT 730.) Dinardo testified that Petitioner had approached him in West Long Beach on May 17, 1983, and asked him if he wanted to "do a job," to make some money. (RT 731-732.) Following this exchange, Dinardo testified that he was told that Petitioner and another individual would be armed with a knife and a gun, and he would be responsible for grabbing the cash out of the register. (RT 733-734.) Dinardo further testified that he saw Petitioner and another individual armed with a knife and gun while they were on the way to the bar. (RT 745.) They suggested that Dinardo should also be armed, but he refused. (RT 745.)

Dinardo testified that he was able to get the register open with some trouble, and he pocketed the $200 that he found inside. (RT 740-741.) He stated that the money was split evenly among the four of them. (RT 743.) Dinardo testified that he never knew that anyone had been shot or stabbed during the robbery until he was arrested in 1994. (RT

743-744.) Following his description of events surrounding the robbery, Dinardo testified about a subsequent interaction with Petitioner. Dinardo testified that Petitioner approached him approximately a week later and asked him if he wanted to "do another job." (RT 878-878.) Dinardo said that he declined Petitioner's offer. (RT 876-878.)

III. INTRODUCTION

> No man's liberty is dispensable. No human being may be traded for another. Our system cherishes each individual. We have fought wars over this principle. We are still fighting those wars.
>
> Sadly, when law enforcement perverts its mission, the criminal justice system does not easily self-correct. We understand that our system makes mistakes; we have appeals to address them. But this case goes beyond mistakes, beyond the unavoidable errors of a fallible system. This case is about intentional misconduct, subornation of perjury, conspiracy, the framing of innocent men. While judges are scrutinized — our decisions made in public and appealed — law enforcement decisions like these rarely see the light of day. The public necessarily relies on the integrity and professionalism of its officials.

(*Limone v. U.S.* (D. Mass. 2007) 497 F. Supp. 2d 143, 153.)

Charles Murdoch's case is one that defies basic logic and decency. It depends upon our collective blind eye to the State's reliance upon an unconstitutional informant program that suppresses the constitution in order to secure convictions at any cost. Indeed, the State's narrative depends upon overlooking the very facts of the case as they were initially defined in 1983, *by the Long Beach Police Department*. It would seem impossible if it were not for the fact that Long Beach has long served as the unforgiving narrator of several wrongful conviction cases which mirror the underlying case in almost every respect. Murdoch presents these cases, sometimes in parallel, not as evidence of the actual *Brady* violations in this case (there is ample evidence of that), but as a means of showing a pattern, a practice and an intention by the police, prosecutors and judiciary.

These cases illustrate the State carelessly and purposefully trading one human being for another.

Petitioner notes that the Los Angeles County criminal justice system presents an important historical background as well, as Long Beach exists as a subset within the County with shared resources and personnel. Indeed, it has a shared history that has never been investigated.[2] However, there are glimpses of the parallels between the larger Los Angeles County criminal justice system and the Long Beach justice system.[3] It can be seen in the cases that identify the cross-over and parallels.[4] This context is critical to

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[2] The Los Angeles Grand Jury Report of Findings is a compendium of evidence related to the unconstitutional use of "informants" from 1989-1990. (See Exh. R.) The investigation and report was thorough and incorporated depositions and testimony from law enforcement officers, prosecutors (including attorney general representatives), judges and informants. The report provides an in depth understanding of the significant role that "informants," and the use of their known false evidence, played in Los Angeles County criminal justice system throughout the 1970's and 1980's. This report includes cases and informants moved to and from Long Beach. (See Exh. R, at p. 14.)

[3] Petitioner's cursory search of Los Angeles County - Long Beach wrongful conviction cases and *exonerations* based upon *Brady* violations related to informants and law enforcement and prosecutorial misconduct includes the following 6 cases: (1) *People v. Samuel Q. Bonner,* Case No. A026128 [Bonner was released in 2022 after serving 37 years based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]; (2) *People v. Oscar Lee Morris*, Case No. A025767 [Morris was released in 2000 having served approximately 17 years after being wrongfully convicted based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]; (3) *People v. Thomas Goldstein*, Case No. A020746 [Goldstein was released in 2004 after serving approximately 25 years based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]; (4) *People v. Barry Williams*, Case No. A623377 [Williams was released in 2021 after serving approximately 35 years based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]; (5) & (6) *People v. Arthur Grajeda and Senon Grajeda,* Case No. A034284 [Arthur and Senon Grajeda were released in 1990 based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]. Petitioner asks this Court to take judicial notice of these cases and the findings of fact as set forth by the courts that ultimately exonerated the individuals.

[4] Petitioner notes the parallels between the cases related to Officer Perez which spurred what came to be known as the "Rampart Scandal" and the cases related to Officer Alcazar of the Long Beach Police Department. (See Exh.V; see *also Ovando v. City of*

understanding Petitioner's case which was built entirely upon the testimony of an interested and coerced informant and the related constitutional claims presented herein.

This context was not lost on the Honorable Ninth Circuit Chief Justice Kozinski, who openly acknowledged the troubling similarities (or "patterns") between the cases in Long Beach as noted above, particularly in *Taylor v. Maddox* (9th Cir. 2004) 366 F.3d 992, *Goldstein v. City of Long Beach* (9th Cir. 2007) 481 F.3d 1170, 1171 (noting that Goldstein was granted habeas relief when it was revealed that a 1980's California jailhouse informant had not disclosed that his sentence was reduced in return for testimony) and Murdoch's second Ninth Circuit appeal *en banc*, *Murdoch v. Castro* (9th Cir. 2010) 609 F.3d 983. Murdoch notes that the Judge Kozinski carefully named names in the decisions, identifying Officer MacLyman as an officer from Long Beach who had been implicated in the government misconduct underlying Goldstein's wrongful conviction, as well as Judge Sheldon[5] as the trier of fact in *Taylor v. Maddox*, who the Ninth Circuit overturned. The Ninth Circuit held that Judge Sheldon's decision finding Taylor's confession as a unrepresented, unaccompanied minor to have been involuntary

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Los Angeles (2000) 92 F.Supp.2d 1011, 1014 [A wide variety of misconduct by LAPD officers including the shooting of unarmed suspects, the planting of evidence to justify those shootings, the preparation of false police reports to cover up the misconduct and the presentation of perjured testimony resulting in the false convictions and imprisonment of a number of innocent citizens.].) Both officers Perez and Alcazar were engaged in numerous criminal enterprises while in uniform as law enforcement officers and prosecuted by the Department of Justice in federal court. While Officer Perez's criminal conduct was investigated with respect to the larger police department, Officer Alcazar's was not. Petitioner notes that Officer Alcazar was partnered with Detective McMahon at the Long Beach Police Department during his employment with the department**.** (See record on appeal, *People v. Selvin Carranza*, L.A. Co. Case No. NA043768; COA No. B161364.)

[5] Petitioner notes that Judge Sheldon was a prosecutor with the Los Angeles County District Attorney's Office from 1969-1983. (See Exh. W; https://www.presstelegram.com/2012/10/20/veteran-long-beach-judge-charles-sheldon-retires/#.) Judge Sheldon was the head of the Organized Crime Division at the District Attorney's Office in L.A. and the Head Assistant District Attorney at the Long Beach Branch, immediately prior to being moved up to the bench of the Long Beach Superior Court. (Exh. W.) Petitioner further notes that the underlying bar robberies took place in 1983 and involved three individuals acting in concert.

and coerced. In a published decision, the court overturned Judge Sheldon's application of the law as a patently "unreasonable" application of the law as applied to the facts. Remarkably, Judge Kozinski named both Judge Sheldon and Officer MacLyman as officials who did not represent the State with integrity.

Both of these State officials helped to secure Murdoch's conviction.[6] This was specifically noted by Judge Kozinski, as he reviewed Murdoch's case at the Ninth Circuit. Murdoch asks this Court to take judicial notice of the decisions and Judge Kozinski's factual findings as relevant to this petition before the Court. Context is important, perspective is everything. In passing, Judge Kozinski provided context to the factual findings of the Court's decision in *Taylor v. Maddox*, stating:

> We note in passing that police misconduct is not unknown in the Long Beach Police Department. We recently affirmed the grant of habeas relief to petitioner Thomas Goldstein, who was convicted in 1980 of first-degree murder. See Judgment Order, No. CV 98-5035-DT (C.D. Cal. Dec. 27, 2002), aff'd 82 Fed. Appx. 592 (9th Cir. 2003). Habeas relief was granted because the prosecution failed to disclose to Goldstein that Long Beach officers had struck a deal with an informant, who provided critical testimony against Goldstein at trial; that they were impermissibly suggestive in handling the photographic identification of Goldstein by the only eyewitness to the murder; and that they advised the eyewitness not to retake the stand after he had misgivings about his recognition of Goldstein. Among the officers investigating Goldstein for the murder was Detective William MacLyman. R.T., *People v. Goldstein,* Case No. A020746 (L.A.Cty.Super.Ct.), at 603-04.

(*Taylor v. Maddox, supra*, at p. 1014, fn. 17.) Petitioner notes the same evidence "in passing."

Murdoch's 1995 cold case prosecution was fraught from the start. The entire investigation and prosecution was based upon the State's gamble that the 11-year delay

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[6] Judge Kozinski referred to Judge Sheldon's brazen offer of leniency to informant Dinardo, following his jury conviction and the imposition of a life sentence, as "Disgraceful." (See *Murdoch v. Castro, supra*, 609 F.3d at p. 1007.)

would sufficiently blur the evidence of the underlying 1983 bar robbery. The troubling nature of the cold case investigation and prosecution is emphasized by the numerous "sealed" portions of the record without a legal basis.

Initially, the police and prosecution edited the most important aspect of the underlying Horse Shoe Bar robbery – the fact that the investigating officers from the Long Beach Police also investigated a second robbery, two miles away, at the Time Out Bar an hour later - which was they determined to have been committed by ***the same*** three Latino men (referred to repeatedly as "Mexican" throughout the police reports). All initial eyewitnesses to the two bar robberies and the surrounding events describe the suspects as "two or three Mexican men." Then, inexplicably, after publishing a press release on the bar robberies, the Long Beach Police ceased their investigation of the crimes for over a decade.

When the case was "reopened" over a decade later, in 1994, the Time Out Bar robbery disappeared entirely and inexplicably from the narrative. Without more, the State rewrote the tale describing a single bar robbery in Long Beach, focused on two Caucasian suspects. The State's cold case investigation was purportedly catalyzed by the discovery that one of the fingerprints found at the scene 11 years prior "matched" Dino Dinardo. The cold case investigation conveniently overlooked that the 1983 latent fingerprint analysis had identified two individuals by name, and their namers were curiously Latino-sounding. No eyewitness description ever "matched" Dinardo or Petitioner. No witness identified Dinardo or Petitioner from the carefully curated line-ups provided by Detective Pavek. Rather, the State proceeded with its prosecution which suppressed initial evidence, relied upon coerced and unreliable statements from manipulated witnesses and compromised witnesses and informants, and delayed the agreed upon leniency for informant Dinardo in an attempt to circumvent the State's obligations under *Brady*.

Much as in the *Goldstein* case, here, the State suppressed exculpatory impeachment evidence regarding the informant for over two decades. Without the suppressed evidence, Murdoch did not have the means to challenge the State's false

narrative of the case which was based upon false testimony from law enforcement as well as the interested informant, Dinardo. Murdoch was not provided with the *Brady* evidence to support his claims set forth in the present petition until April-May of 2023, when the District Attorney's Discovery Unit provided approximately 2,300 pages of discovery. Murdoch had no way of discovering much of this evidence at an earlier date, as the *Brady* evidence cited herein was never provided in pre-trial or post-conviction discovery despite the formal requests. (Exhs. E, DD.) Murdoch presents newly discovered claims and evidence under the amended Penal Code section 1473, which now removes the procedural bars for the presentation of his claim of actual innocence. The present claims and new evidence are corroborated by the evidence previously set forth in Murdoch's original habeas proceeding which resulted in a denial of relief, by a split *en banc* Ninth Circuit Court of Appeals panel. Representing the five dissenting justices on the Court in their dissent to the denial of relief, Ninth Circuit Chief Justice Kozinski summarized:

> If it wasn't for bad luck, Murdoch wouldn't have no luck at all. He's wakin' up this mornin' in jail when there's strong proof he ain't done nothing wrong. I would certainly defer to a jury's contrary verdict if it had seen this evidence and convicted Murdoch after a fair trial, presided over by a fair judge, followed by an appeal where the justices considered all of his constitutional claims. But Murdoch had none of these.

(*Murdoch v. Castro* , *supra,* 609 F.3d at pp. 996-997 [dissent by Chief Justice Kozinski].)

Murdoch maintains his innocence as he has done for three decades now. As noted in Kozinski's dissent almost 15 years ago, the State's careful coordination between law enforcement, the prosecution and the judiciary ensured the jury a narrative of unreliable and mostly false evidence. This is the house of cards that the State built Petitioner's conviction upon. Now, 30 years later, Petitioner asks that this court to consider the recently provided discovery as evidence in support of his exoneration and knock down this mendacious house of cards.

Petitioner further invites the State to pursue the suppressed evidence of the second Time Out Bar robbery, and pursue justice and the actual three Latino suspects responsible for both bar robberies. Petitioner's post-conviction efforts and investigations have always depended upon this contradiction of evidence between the initial investigation and the cold case prosecution. Indeed, the initial investigation identified two bar robberies committed by the same Latino male suspects. In sharp contrast, the cold case narrative was scripted a decade later by law enforcement, puppeteers for an unreliable informant, Dino Dinardo. Murdoch prays that this Court imparts the justice that is long overdue and restore his rightful liberty. As of this year, Petitioner has spent 30 years as a prisoner of this State based upon this case. Justice demands that he is declared actually innocent and ordered released in the expedited fashion.

MEMORANDUM OF POINTS AND AUTHORITIES

IV. RECENTLY DISCOVERED *BRADY* AND *TROMBETTA* EVIDENCE CONSTITUTES STRONG EVIDENCE OF PETITIONER'S ACTUAL INNOCENCE UNDER THE NEWLY AMENDED LAW

"The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings." (Cal. Const., art. VI, § 10.) "The writ of habeas corpus enjoys an extremely important place in the history of this state and this nation. Often termed the 'Great Writ,' it 'has been justifiably lauded as " 'the safe-guard and the palladium of our liberties.' " ' " (*People v. Villa* (2009) 45 Cal.4th 1063, 1068.)

"[A] habeas corpus proceeding is not a trial of guilt or innocence and the findings of the habeas corpus court do not constitute an acquittal. The scope of a writ of habeas corpus is broad, but in this case, as in most cases, it is designed to correct an erroneous conviction. It achieves that purpose by invalidating the conviction and restoring the defendant to the position she or he would be in if there had been no trial and conviction." (*In re Cruz* (2003) 104 Cal.App.4th 1339, 1346, citing *In re Crow* (1971) 4 Cal.3d 613,

620; see also *In re Hall* (1981) 30 Cal.3d 408, 417.) "[A] successful habeas corpus petition necessarily contemplates and virtually always permits a retrial. [Citations.] The possibility of a retrial is often assumed without discussion." (*In re Cruz, supra*, 104 Cal.App.4th at p. 1347.)

Prior to January 1, 2017, in order to grant habeas relief, the court needed to find that the "new evidence" completely undermined the prosecution's case and pointed " ' "unerringly to innocence." ' " (*In re Johnson* (1998) 18 Cal.4th 447, 462.) The law has changed, effectively lowering the standard of proof for actual innocence. Effective January 1, 2017, relief may be granted when: "New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial." (§ 1473, subd. (b)(3)(A).) The statute defines "new evidence" as "evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching." (§ 1473, subd. (b)(3)(B).)

The standard is comparable to the new trial standard in California, or new evidence that "is in fact newly discovered; that is not merely cumulative to other evidence bearing on the factual issue;... and that the moving party could not, with reasonable diligence have discovered and produced [] at trial." (*People v. McDaniel* (1976) 16 Cal.3d 156, 178.) The new standard is also comparable to the federal new trial standard, which provides that the new evidence "was unknown or unavailable to the defendant at the time of trial" and that the "failure to learn of the evidence was not due to lack of diligence by the defendant[,]" (*United States v. Colon-Munoz* (1st Cir. 2003) 318 F3d.348, 358.) The statute creates a sliding scale: in a case where the evidence of guilt presented at trial was overwhelming, only the most compelling new evidence will provide a basis for habeas relief; on the other hand, if the trial was close, the new evidence need not point so conclusively to innocence to tip the scales in favor of the petitioner. (*In re Sagin* (2019) 39 Cal.App.5th 570, 579-580.)

The law was recently amended again, and as of January 1, 2024, and the procedural bars to presenting new habeas claims related to innocence were removed. SB 97 was signed into law by Governor Newsom, on October 7, 2023, and it became effective on January 1, 2024. The present Petition for Writ of Habeas Corpus is presented under the law as amended. Petitioner presents the Court with evidence and claims that have not been presented to the Court in a prior filing, in part because previous procedural bars served as a prohibition. In particular, Petitioner notes that the *Brady* and *Trombetta* claim related to the Time Out Bar robbery would have likely been procedurally barred from consideration in a previous habeas petition. Further, Petitioner submits declarations that were provided in 2009 and 2001 from two primary witnesses, Raymond Barlow (Exh. L) and Paul Greigo (Exh. BB) as new evidence of his innocence. While the dates of these declarations are from decades ago, this evidence has never been presented to a court before, and Petitioner was only able to present this corroborating evidence with the newly discovered *Brady* evidence which was just provided this past year. Thus, the new evidence should be considered timely and presented with due diligence under the amended law.

Accordingly, Petitioner's claims and the corresponding supporting evidence should be viewed without respect to procedural bars, as his wrongful conviction and actual innocence could have been presented without the *Brady* and *Trombetta* evidence presented collectively herein, and it is presented by Petitioner, through his *pro bono* counsel, without undue delay.

V. THE STATE FAILED TO DISCLOSE MATERIAL, EXCULPATORY EVIDENCE THAT UNDERMINED CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *BRADY*

> The fact that a constitutional mandate elicits less diligence from a government lawyer than one's daily errands signifies a systemic problem: Some prosecutors don't care about *Brady* because courts don't *make* them care... *Brady* violations have reached epidemic proportions in recent years, and the federal

> and state reporters bear testament to this unsettling trend... When a public official behaves with such casual disregard for his constitutional obligations and the rights of the accused, it erodes the public's trust in our justice system, and chips away at the foundational premises of the rule of law. When such transgressions are acknowledged yet forgiven by the courts, we endorse and invite their repetition.

(*United States v. Olsen* (9th Cir. 2013) 737 F.3d 625, 631-632 (Kozinski, J., dissenting from denial of reh'g *en banc*).)

In present case, the State made a thorough record of its intention to violate the principals of *Brady* in so far as the prosecution repeatedly stated that it would suppress evidence that "would tend to call the government's case into doubt." (See Exhs. H, M, N; see also RT 205, 214, 232, 234-235.) To this end, the State withheld evidence of the original investigation of the crimes along with critical impeachment evidence related to the State's informant witness and permitted related false testimony which gravely undermines confidence in Petitioner's conviction. Here, the State, through the prosecution and law enforcement, actively suppressed critical evidence pertaining to the initial investigation, presented false evidence and failed to preserve exculpatory third party culpability evidence. Petitioner has requested much of the suppressed evidence since he was arrested and charged in 1995. On at least two occasions, the State falsely represented that the evidence did not exist – to the Court and to Petitioner. (See Exhs. H, DD.) The suppressed evidence includes:

- Material evidence of officer notes related to the Time Out Bar robbery, which took place one hour after the Horse Shoe Bar robbery, in Long Beach, involving the same suspects and investigated by the same Long Beach Police Department detectives – Officers Pavek and MacLyman. (Exhs.A, B.)
- Material evidence identifying two suspects based upon the latent fingerprints discovered at the Horse Shoe Bar in 1983. (Exhs. C, D.)
- Material evidence that Petitioner's co-defendant, Dino Dinardo, acted as an informant in a prior case in Long Beach and provided Long Beach Police with false evidence

identifying Raymond Barlow in exchange for leniency. (Exh. H, I, J.)

- Material evidence of Dino Dinardo's CLETS/Probation Officer Report which included numerous prior arrests and convictions for theft offenses that were not provided to Petitioner in pre-trial discovery, including the case in which Dinardo received leniency from the Long Beach Police in exchange for false evidence implicating Raymond Barlow. (Exh. I.)
- Material evidence that Officer Pavek presented false evidence to the jury through his testimony which included suppression of the Time Out Bar robbery and related evidence, as well as false evidence. (Exh. P.)
- Material evidence of the Long Beach District Attorney's repeated offers of leniency to Dinardo in exchange for testimony implicating Petitioner were part of a systemic informant program – as reflected in the L.A. Grand Jury Report, the Thomas Goldstein case (as well as numerous other wrongful convictions derived from the Long Beach informant program), and as recently exposed in Orange County. (Exhs. R, S, II.)

Due process demands that the Court reverse Petitioner's unlawful judgment and conviction based suppressed exculpatory evidence and false evidence.

Under *Brady v. Maryland* (1963) 373 U.S. 83, "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*Id*. at p. 87.) Accordingly, the State has a duty to disclose any favorable and material evidence even without a request. (*Ibid*.; *United States v. Bagley* (1985) 473 U.S. 667, 678; *In re Sassounian* (1995) 9 Cal.4th 535, 543.)

There are three elements to a *Brady* violation. First, evidence must be suppressed, either willfully or inadvertently. (*People v. Salazar* (2005) 35 Cal.4th 1031, 1035.) Second, the suppressed evidence must be favorable to the prosecution, meaning it "either helps the defendant or hurts the prosecution" (*In re Sassounian, supra*, at p. 544) in that it is exculpatory or has impeachment value. (*Strickler v. Greene* (1999) 527 U.S. 263, 282

(*Strickler*).) Lastly, the suppressed evidence must be "material," meaning there is "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." (*United States v. Bagley, supra*, at p. 682.) "Moreover, the rule encompasses evidence 'known only to police investigators and not to the prosecutor.' [Citation.] In order to comply with *Brady*, therefore, 'the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police.'" (*Strickler, supra*, 527 U.S. at pp. 280-281.)

Evidence is "suppressed" where it is known to the State and not disclosed to the defendant. (*Strickler, supra*, 527 U.S. at p. 282.) The State's duty to disclose is affirmative; it applies "even though there has been no request by the accused." (*Id.* at p. 280 (citing *United States v. Agurs* (1976) 427 U.S. 97).) To satisfy its duty, the State must disclose evidence known to the prosecutor as well as evidence " 'known only to police investigators and not to the prosecutor.' " (*Id*. at pp. 280–81 (citing *Kyles v. Whitley* (1995) 514 U.S. 419, 438).) Thus, the prosecutor has an obligation "to learn of any favorable evidence known to the others acting on the government's behalf in [the] case, including the police." (*Id*. at p. 281 (citing *Kyles, supra*, 514 U.S. at p. 437).) Once the prosecutor acquires favorable information, even if she "inadvertently" fails to communicate it to the defendant, evidence has been suppressed. (*Id*. at p. 282.)

Evidence is "favorable to the accused" for *Brady* purposes if it is either exculpatory or impeaching. (*Strickler*, *supra*, 527 U.S. at pp. 281–82.) If information would be "advantageous" to the defendant (*Banks v. Dretke* (2004) 540 U.S. 668, 691, 124 S.Ct. 1256), or "would tend to call the government's case into doubt," (*Milke v. Ryan* (9th Cir.2013) 711 F.3d 998, 1012), it is favorable. Whether evidence is favorable is a question of substance, not degree, and evidence that has any affirmative, evidentiary support for the defendant's case or any impeachment value is, by definition, favorable. (See *Strickler, supra*, 527 U.S. at pp. 281–82.) Although the weight of the evidence

bears on whether its suppression was prejudicial, evidence is favorable to a defendant even if its value is only minimal. (See *Ibid*.; *Milke, supra*, 711 F.3d at p. 1012.)

The suppression of favorable evidence is prejudicial if that evidence was "material" for *Brady* purposes. (*Strickler*, *supra*, 527 U.S. at 282.) Evidence is "material" if it "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." (*Id.* at p. 290, citing *Kyles*, *supra*, 514 U.S. at p. 435.) Similarly, California courts have held, "Evidence is material [under *Brady*] if there is a reasonable probability its disclosure would have altered the trial result." (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1132.)

To establish materiality, a defendant need not demonstrate "that disclosure of the suppressed evidence would have resulted ultimately in [his] acquittal." (*Kyles, supra*, 514 U.S. at p. 434.) Rather, the defendant need only establish "a 'reasonable probability' of a different result." (*Ibid.* (quoting *United States v. Bagley* (1985) 473 U.S. 667, 678).) A "reasonable probability" exists if "the government's evidentiary suppression 'undermines confidence in the outcome of the trial.' " (*Ibid*. (quoting *Bagley*, *supra*, 473 U.S. at p. 678.); see also *United States v. Sedaghaty* (9th Cir.2013) 728 F.3d 885, 900 ("In evaluating materiality, we focus on whether the withholding of the evidence undermines our trust in the fairness of the trial and the resulting verdict.".)

Petitioner's defense counsels filed several discovery motions specifically requesting the evidence that was suppressed. (Exh. E.) Petitioner's direct appeal and related habeas was litigated until the Ninth Circuit's *en banc* decision denying relief in 2010. (See *Murdoch v. Castro, supra*, 609 F.3d 983.) Petitioner filed *pro se* motions for post-conviction discovery under Penal Code section 1054.9(a) in 2013 and 2014. (Exh. DD.) In his post-conviction discovery request, Petitioner again requested the release of evidence originally requested in pre-trial discovery. Present counsel made an additional discovery request that was fulfilled in 2023. This petition is based upon the evidence provided in the 2023 discovery. (See Exh. CC.)

In the present case, the State, through the Long Beach Police Officers MacLyman, Pavek and McMahon, and the District Attorney's Office suppressed favorable, exculpatory, and material evidence which was kept from Petitioner and the jury. The record reflects that the District Attorney's Office repeatedly declared that they were not obligated to turn over material, exculpatory evidence (RT 205, 209, 214; see also Exhs. F, G, M, N, DD [1/10/14 Reply letter from D.A. denying the existence of records related to Dinardo/Barlow]). In concert with the suppression of exculpatory evidence, the State presented false evidence to the jury. In addition, to the extent that the State has failed to provide most of the evidence related to its investigation of the Time Out Bar robbery in the current Penal Code section 1054.9(a) discovery, it must be assumed that the State either destroyed or failed to retain this exculpatory evidence. It should therefore be deemed "destroyed" under *Trombetta*. This claim and related evidence will be set forth in Claim VII. As set forth below, the suppression of critical, exculpatory evidence and the presentation of false evidence was prejudicial to Petitioner and his defense.

A. Law Enforcement Officers Suppressed Material, Exculpatory Evidence In Violation Of *Brady*

Brady held "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*Brady, supra*, 373 U.S. at 87.) This holding was an "extension" of *Mooney v. Holohan* (1935) 294 U.S. 103, which held the government's presentation of testimony it knew to be false, as well as its suppression of evidence that would have impeached that testimony, could require reversal of a conviction. (See *Brady*, *supra*, 373 U.S. at p. 86.) The Supreme Court reasoned:

> The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.

(*Id*. at p. 87.) *Brady* framed the right to material, exculpatory evidence in terms of the defendant rather than the state actor responsible for the nondisclosure. As the Court later explained, the "purpose" of *Brady's* disclosure requirement is "to ensure that a miscarriage of justice does not occur." (*United States v. Bagley* (1985) 473 U.S. 667, 675.) Just one year after *Brady*, the Fourth Circuit held police officers as well as prosecutors were bound to disclose material, exculpatory evidence, explaining:

> [I]t makes no difference if the withholding is by officials other than the prosecutor. The police are also part of the prosecution, and the taint on the trial is no less if they, rather than the State's Attorney, were guilty of the nondisclosure . . . . The duty to disclose is that of the state, which ordinarily acts through the prosecuting attorney; but if he too is the victim of police suppression of the material information, the state's failure is not on that account excused. We cannot condone the attempt to connect the defendant with the crime by questionable inferences which might be refuted by undisclosed and unproduced documents then in the hands of the police.

(*Barbee v. Warden* (4th Cir. 1964) 331 F.2d 842, 846.)

Requiring police officers as well as prosecutors to disclose material and exculpatory evidence follows logically from *Brady*'s rationale. "As far as the Constitution is concerned, a criminal defendant is equally deprived of his or her due process rights when the police rather than the prosecutor suppresses exculpatory evidence because, in either case, the impact on the fundamental fairness of the defendant's trial is the same." (*Moldowan v. City of Warren* (6th Cir. 2009) 578 F.3d 351, 379.) Because police officers play an essential role in forming the prosecution's case, limiting disclosure obligations to the prosecutor would "undermine *Brady* by allowing the investigating agency to prevent production by keeping a report out of the prosecutor's hands." (*United States v. Blanco* (9th Cir. 2004) 392 F.3d 382, 388 (quoting *United States v. Zuno*-Arce (9th Cir. 1995) 44 F.3d 1420, 1427).)

In the present case, both the police and prosecution deprived Petitioner of exculpatory evidence in violation of his right to due process and fundamental fairness.

1. Evidence Related to the Contemporaneous Time Out Bar Robbery

The State suppressed evidence of the May 17, 1983 robbery at the Time Out Bar in Long Beach involving the same "three male Mexican suspects," approximately an hour or two after the underlying Horse Shoe Bar robbery. The second robbery was investigated by the same Long Beach Police officers responsible for investigating the Horse Shoe Bar robbery – Detectives Pavek and MacLyman. This evidence, which remains almost entirely suppressed, constitutes provocative, material, and exculpatory evidence in support of Petitioner's innocence.

a. Factual Background

Petitioner's defense counsel repeatedly requested discovery of initial investigation evidence including any initial named suspects. (See Exh. E.) The Long Beach Police Department issued a Press Release detailing the reports of two bar robberies committed in Long Beach committed on May 17, 1983. (Exh. A.) The release noted that Chris's Horse Shoe Bar had been robbed by "three male Mexican suspects," at approximately 9 p.m. During the robbery, one suspect armed with a rifle shot a patron who later died and another suspect stabbed a separate patron as the suspects fled. The release suggests that the suspects left the bar without actually taking any money. The release reads, "[t]he three suspects apparently frightened by the sudden action, fled from the bar." (Exh. A.) Approximately an hour later, "three male Mexican suspects," closely resembling the suspects from the earlier bar robbery, robbed the Time Out Bar. The release identified Detectives Pavek and MacLyman as the investigating officers for both robberies. (Exh. A.)

Petitioner located an excerpted article from the Long Beach Press Telegram newspaper, published on or about May 18, 1983, provided a description of the two bar robberies by Lt. Reed of the Long Beach Police Department. (Exh. A.) Lt. Reed described the Horse Shoe Bar and Time Out Bar robberies as committed by "the same"

three "Mexican" individuals. (Exh. A.) Lt. Reed reported that the "trio fled without getting any money" from the Horse Shoe Bar. Lt. Reed could not verify if the trio took any money from the Time Out Bar. However, the Time Out Bar bartender, Keith McKee reported that $133 had been taken from the register by a suspect with a .45 caliber gun. (Exh. A.)

In the 2023 discovery from the District Attorney's Discovery Unit, Petitioner received a random page of officer notes (on the same lined paper as the officer notes from the 1983 investigation of the Horse Shoe Bar robbery) which identifies a witness who saw a car driving Westbound on "Pacific." (Exh. B.) In 1983, [Chris's] Horse Shoe Bar was located at 2222 E. Anaheim St. The Time Out Bar was located at 2054 Pacific Ave., at the time of the robberies. A Google Maps search places the two bars approximately 2.5 miles apart. (See Exh. FF.) Given the fact that Detectives Pavek and MacLyman investigated both bar robberies and provided notes of the investigation, the distance and proximity, the reference in the officer notes to Pacific Ave. suggests that the notes pertain to the second, contemporaneous Time Out Bar robbery. (See Exh. B.) The notes further suggest that there was a witness who saw a car that could have been connected to both robberies. (Exh. B.)

b. The State Suppressed Exculpatory Evidence Of The Contemporaneous, Related Bar Robbery, Involving The Same Latino Suspects, Which Was Material to Petitioner's Defense, Prejudicing Petitioner

Here, the suppressed evidence related to the investigation of the Time Out Bar robbery was material to this case in so far as it set forth evidence of a third party culpability defense that is counter to the prosecution's theory of the case and evidence in the record. This exculpatory evidence had the potential to provide a complete defense for Petitioner, not just a third party defense. Accordingly, the suppression of this evidence prejudiced Petitioner by depriving him of a complete defense.

Evidence that contradicts or undermines the prosecution theory of the case or testimony of a prosecution witness is favorable evidence for the defense. (See *People v.*

Filson (1994) 22 Cal.App.4th 1841, 1852, disapproved on another ground in *People v. Martinez* (1995) 11 Cal.4th 434, 448, 452) In *People v. Filson*, the court held the prosecution had a duty to disclose a tape recorded statement of a defendant made two hours after the commission of the crime potentially showing defendant was intoxicated where the defendant was putting on an intoxication defense to the crime and the victim and investigating officer had testified defendant was not intoxicated. (*Id*. at p. 1848; see also *Comstock v. Humphries* (9th Cir. 2015) 786 F.3d 701 [prosecution had duty to disclose fact victim of alleged theft of a ring had stated he might have lost ring before it was allegedly stolen].)

Evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (*People v. Lucas* (2014) 60 Cal.4th 153, 274 citing *United States v. Bagley* (1985) 473 U.S. 667, 682; accord *Kyles v. Whitley* (1995) 514 U.S. 419, 433.) Whether there is a reasonable probability of a different result is an objective test, "based on an 'assumption that the decisionmaker is reasonably, conscientiously, and impartially applying the standards that govern the decision,' and not dependent on the 'idiosyncrasies of the particular decisionmaker,' including the 'possibility of arbitrariness, whimsy, caprice, "nullification," and the like.' [Citation]." (*In re Sassounian* (1995) 9 Cal.4th 535, 544.)

"Materiality ... requires more than a showing that the suppressed evidence would have been admissible [citation], that the absence of the suppressed evidence made conviction 'more likely' [citation], or that using the suppressed evidence to discredit a witness's testimony 'might have changed the outcome of the trial' [citation]." (*People v. Salazar* (2005) 35 Cal.4th 1031, 1043.)

Moreover, in determining the materiality of evidence that was not disclosed, "the question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary

suppression 'undermines confidence in the outcome of the trial.'" (*Kyles v. Whitley, supra,* 514 U.S. at p. 434; accord *Turner v. United States* (2017) 137 S.Ct. 1885, 1893; *Cone v. Bell* (2009) 556 U.S. 449, 469–470.)

As an initial matter, the evidence of the second contemporaneous robbery involving the same suspects was corroborating evidence that the suspects were in fact three Latino men, not Petitioner. Indeed, the Long Beach Police Department's reports of the second robbery, identifying the "same" suspects, was and is exculpatory evidence as it provided a third party culpability defense. In this context, the suppressed notes from this investigation constitute corroborating evidence of this investigation and suggests that there is additional suppressed evidence that was derived from this investigation that is material and exculpatory. (Exh. B.) It is material and exculpatory because it provides additional evidence emphasizing the irreconcilable disparities between the initial evidence and the evidence presented in the cold case investigation.

There were other details that the Long Beach Police Department published to the public which also contradicted the cold case investigation and resulting narrative. The Long Beach Police reported that no money had been taken from the Horse Shoe Bar, as the three suspects fled the crime scene when they were startled by the gunfire. (See Exhs. A, B.) There is nothing in the record to explain the conflicting evidence presented by the Long Beach Police Department.

More significantly, there is nothing in the record provided by the State which distinguishes the Time Out Bar robbery such that would explain the lack of subsequent investigation in relation to the Horse Shoe Bar robbery. The complete omission in the investigation of the underlying offense is contrary to logic and basic reason. The page of officer notes referencing "Pacific" Ave. corroborates the initial Long Beach Police Department press release and the news article quoting Long Beach Police Officer, Lt. Reed. Again, logic suggests that evidence from a contemporaneous "bar robbery" involving the same suspects would have provided a second, additional location for evidence to be gathered, informing the investigation – if an investigation was ever the

intent of the Long Beach Police. Accordingly, the suppression of this investigation and any evidence related to the Time Out Bar robbery constitutes a *Brady* violation. Because the State controls all of the evidence related to the investigation, it is unknown what happened to the evidence collected from the initial investigation. Accordingly, Petitioner also presents the suppression of the Time Out Bar robbery evidence as a *Trombetta* claim, as it is possible that the evidence related to Detective Pavek and MacLyman's investigation of the related bar robbery was destroyed by the State and no longer exists.[7]

Here, the suppressed evidence regarding the second bar robbery presents a house of cards of *Brady* evidence. This evidence would render the State's theory of the case impossible. Further, Detective Pavek and Dinardo's testimony reflecting a single bar robbery committed by two Caucasian individuals would constitute false evidence. (See Exhs. P, Y, EE.) The initial investigations were material to the identification of the suspects, understanding of the details of events related to both crimes, as well as the veracity of all the evidence presented by Detective Pavek in the cold case investigation and prosecution – including his own statements under oath. Indeed, absent this critical evidence, the cold case investigation over a decade after the actual robberies lacked physical evidence, leaving the State to rely largely upon stale witness accounts which were contrary to their initial statements. The suppression of this evidence undoubtedly deprived Petitioner of a complete defense to the prosecution's theory and presentation of evidence. Thus, it was extremely, morbidly prejudicial.

2. Names Of Initial Suspects Listed On Latent Fingerprint Cards

The State suppressed latent fingerprint identification from May 17, 1983, identifying two initial male suspects. This constitutes material, exculpatory evidence which comports with the initial witness reports. (Exh. D.)

a. Factual Background

[7] The current state of the Time Out Bar robbery evidence will be discussed in Petitioner's *Trombetta* claim, set forth in full in Claim III.

As previously noted, the defense repeatedly requested evidence related to the initial investigation in 1983, including any identified suspects. (See Exh. E.) The prosecution provided *responses* to the discovery requests, but not evidence. (See Exh. F.) The prosecution spent significant effort and argument in support of a seemingly local principle that *Brady* is not violated by the prosecution's intentional scheduling of informant leniency for after the testimony is provided (so as to avoid impeachment). (See RT 205, 214; see also Exhs. H, N.)

The Latent Fingerprint Report released to Petitioner prior to trial did not show any initial suspects. (See Exh. C.) Rather, the report only reflected the positive identification of Dinardo as the contributor of a fingerprint on the cash register drawer. (Exh. C.)

Lab Technician A. Perez, the Long Beach Police officer who took the latent prints from the Horse Shoe Bar typed names, "Louie Rodriguez" and "Jesse Alvarez" on the card in 1983, as the initial possible suspects and contributors of the fingerprints. (Exh. D.) There are other handwritten names on the card. (Exh. D.) It is unclear who wrote the names on the card, but they appear to have been added in the cold case "reopening" of the case. (See Exh D.) This initial latent print report was suppressed by the State.

b. The State Suppressed Exculpatory Evidence Of Initial Suspects Identified Based Upon Latent Fingerprints Which Was Material to Petitioner's Defense, Prejudicing Petitioner

Evidence that contradicts or undermines the prosecution theory of the case or testimony of a prosecution witness is favorable evidence for the defense. (See *People v. Filson* (1994) 22 Cal.App.4th 1841, 1852, disapproved on another ground in *People v. Martinez* (1995) 11 Cal.4th 434, 448, 452) In *People v. Filson*, the court held the prosecution had a duty to disclose a tape recorded statement of defendant made two hours after the commission of the crime potentially showing defendant was intoxicated where the defendant was putting on an intoxication defense to the crime and the victim and investigating officer had testified defendant was not intoxicated. (*Id.* at p. 1848; see also *Comstock v. Humphries* (9th Cir. 2015) 786 F.3d 701 [prosecution had duty to disclose

fact victim of alleged theft of a ring had stated he might have lost ring before it was allegedly stolen].)

Here, the suppressed latent fingerprint evidence was material to this case, as it provided third party culpability evidence, and it directly contradicted the State's evidence presented by Detective Pavek. (See Exh. P.) The fingerprint evidence was critical because it contradicted the State's theory of the case which depended upon the cold case discovery of Dinardo's fingerprint on the cash register. Detective Pavek testified that the fingerprint evidence implicating Dinardo, discovered in 1994, was the catalyst to reopening the investigation. (Exh. P.) Indeed, Detective Pavek's account of the investigation suggested that Dinardo's fingerprint was the first lead that was discovered in the case. (Exh. P.) Detective Pavek's narrative of 1994 "discovery" of Dinardo's print is critical to the prosecution's theory of the case, and evidence impeaching or refuting this narrative constitutes exculpatory evidence.

This exculpatory evidence contradicted the State's theory of the case. The suppressed evidence suggested that there were initial suspects based upon the latent fingerprints in 1983, and there is no evidence related to the investigation of these suspects. In addition, the two initial suspects who were identified had names that could be described as derived from Latino heritage. The evidence of these initial suspects ("Rodriguez" and "Alvarez") had the potential to provide a complete defense for Petitioner, not just a third party defense. This suppressed evidence of initial suspects based upon the fingerprint impeaches Detective Pavek's account of the evidence, as well as the 1994 latent fingerprint report (attached hereto as Exh. C) and contradicts the State's theory of guilt. Accordingly, the suppression of this evidence prejudiced Petitioner by depriving him of significant exculpatory evidence.

3. Raymond Barlow and Dino Dinardo's Criminal Histories

The State suppressed Dinardo's prior criminal history, including his numerous arrests in multiple cases which were never prosecuted. In particular, the State suppressed evidence related to a previous case in which Dinardo acted as an informant for the Long

Beach Police, providing false evidence implicating Raymond Barlow in exchange for leniency in his own pending case.

a. Factual Background

During trial, the prosecution provided an abbreviated criminal history which did not include the details of a 1982 theft conviction. (See Exh. I.) In the Probation Officer's Report for this case, the officer noted that Dinardo was caught stealing car stereos and was initially charged with a felony (grand theft). (See Exh. I [Probation Officer's Report at p. 5].) Dinardo stated that he "cooperated" and received a misdemeanor for his "cooperation." (Exh. I [Probation Officer's Report at p. 5].) The evidence related to this case was suppressed during and after trial.

The prosecution also suppressed evidence of Raymond Barlow's criminal history which would have corroborated the evidence that Dinardo was an informant for the Long Beach Police and had provided false evidence implicating Barlow in a theft offense. (See Exh. K.)

In addition to the suppressed evidence, Petitioner submits corroborating evidence in the form of declarations from Paul Griego and Raymond Barlow. Both Griego and Barlow provide evidence corroborating the suppressed evidence that suggests Dinardo was an informant who had provided false evidence in exchange for leniency in a pending criminal prosecutions. (Exhs. L, DD.)

Paul Griego was a close friend of Dinardo for over 27 years.[8] He spoke with Dinardo while in custody of the L.A. County Jail, in 1994. Griego discussed the coercive

[8] Petitioner submits a declaration from present counsel who personally contacted Paul Griego who remains in state custody, at the Substance Abuse Treatment Facility and State Prison, Corcoran, as well as Raymond Barlow who is out of custody, living in Long Beach, CA. (See Exh. CC.) Griego confirmed his declaration from 2001 and affirmed his personal knowledge of the facts stated therein. (See Exhs. BB, CC.) Barlow also confirmed his declaration from 2009 and affirmed his personal knowledge of the facts stated therein. (See Exhs. L, CC.)

circumstances of Dinardo's confession, and Dinardo showed Griego the statement that he wrote regarding the false nature of the confession. (Exh. DD.) Griego specifically acknowledged that Dinardo expressed concern because he had never been involved in or associated with a serious crime like the underlying offense, which is why he felt extreme pressure to provide the false statement requested by the police. (Exh. DD.) Greigo finally noted that he believed that Dinardo was an informant in other where he gave police statements in exchange for leniency. (Exh. DD.)

Raymond Barlow was a friend and associate of Dinardo from their youth. (Exh. L.) At the time of his declaration in 2009, Barlow had known Dinardo for approximately 39 years. (Exh. L.) Barlow stated that he was wrongfully arrested in 1979 or 1980 based upon false accusations by Dinardo. (Exh. L.) In response to his wrongful arrest, Barlow sued the security company that initially arrested him and won an award of $1500. (Exh. L.) Barlow further stated that he learned that his false arrest was the result of a deal that Dinardo had arranged as an informant, whereby he provided the Long Beach Police Department for the false evidence implicating Barlow in exchange for leniency. (Exh. L.)

b. The State Suppressed Exculpatory Evidence Of Dinardo's Criminal History, Which Deprived Petitioner of Impeachment Evidence Against the State's Primary Witness, Prejudicing Petitioner

Here, the suppressed evidence related to Dinardo's criminal history was material to this case in so far as it was evidence that could have been used to impeach the State's primary witness, which happened to be the only evidence. The evidence of Dinardo's and Barlow's criminal histories corroborated the other evidence suggesting that Dinardo was an informant for the Long Beach Police Department. In particular, the evidence of his "cooperation" and the resulting leniency that he received in his 1982 conviction was exchange for the false evidence implicating Barlow. This evidence would have been particularly exculpatory for Petitioner, as it could have been used to impeach Dinardo.

Specifically, Dinardo testified that he had received leniency in the 1982 misdemeanor theft case for returning stolen property. (Exh. O; RT 268.) He denied that

he provided information to police in exchange for leniency. (RT 268.) Indeed Dinardo denied ever having provided information "with respect to other people" involved in crimes to the police. (RT 268.) Accordingly, the suppression of the evidence connecting the two crimes and Dinardo's connection to Barlow deprived Petitioner of impeachment evidence. This exculpatory evidence which tended to support a finding that Dinardo was an interested informant had the potential to discredit his testimony against Petitioner. Accordingly, the suppression of this material evidence prejudiced Petitioner.

B. The Prosecution Suppressed Material, Exculpatory Evidence and Presented False Evidence In Violation of Petitioner's Right to Due Process Under *Brady*

Petitioner incorporates the *Brady* claims made above and attributes the suppression to the prosecution as well, as they bore a constitutional duty to turn over all of the above-referenced material and exculpatory evidence to Petitioner. In addition, the prosecution was responsible for repeatedly suppressing exculpatory impeachment evidence related to the State's star witness and Petitioner's co-defendant, Dinardo, as an informant for the Long Beach Police Department.

In addition to the State's suppression of evidence that Dinardo was an informant, the prosecution suppressed evidence related to Dinardo's claims that his confession was involuntary and coerced. The prosecution's suppression was thorough and seemingly without concern for the very real possibility that Dinardo provided perjured testimony on behalf of the State in order to secure Petitioner's conviction. Indeed, the prosecution was aware of the compromised nature of Dinardo's testimony and the troubling lack of evidence connecting Petitioner to the crime. This is reflected in the internal memos that the prosecution shared well in advance of trial. The suppression of this evidence prevented Petitioner from fairly impeaching Dinardo, in violation of Petitioner's right to due process and a fair trial.

1. Evidence That Dino Dinardo Acted As An Informant

a. Factual and Procedural Background of Informant Case

Between 1979 and 1982, Dino Dinardo was detained by agents of Dean's Investigative services in conjunction with Long Beach Police for alleged auto burglary under Penal Code section 459, from the Import Dealers Service Corporation, located in Long Beach. Dinardo acted as an informant for Long Beach Police in exchange for his release and leniency in the criminal proceedings. Pursuant to this deal, Dinardo falsely accused a childhood friend, Ray Barlow, as a responsible party to the burglary. (Exh. I [Probation Report, p. 5]; Exh. L.) Dinardo was released from custody and charged with grand theft under Penal Code section 487.1, and he it was reduced to a misdemeanor at the time of his plea. (Exh. I [Probation Report, p. 5]; Exh. L.)

Ray Barlow was arrested and charged with auto burglary based upon Dinardo's statement to police. Barlow was eventually released from custody after several days. After his release, Barlow sued the Long Beach Police Department for wrongful arrest. (Exh. L.) Barlow won his civil suit in Long Beach Municipal Court, and he was awarded $1500 in damages. (Exh. L.)

Prior to trial, in 1994, the Long Beach Police interviewed Lance Barlow, Raymond Barlow's brother. (Exh. J.) The notes from this interview were suppressed by the prosecution, along with other evidence related to this case, as admitted by D.A. Lopez set forth below. During the interview, Lance Barlow told the police that he met Petitioner through Petitioner's step brother. (Exh. J.) He further told the police that his brother Raymond was an associate of both Petitioner and Dinardo. (Exh. J.) In the notes, the police indicate "Raymond Barlow=Pitchess" and "poss. of explosives." (Exh. J.) Below these notes, the police identify an incident where Dinardo was caught stealing car stereos and was arrested. Dinardo eventually pinned the criminal enterprise on Raymond Barlow in exchange for leniency. (Exh. J.) On the second page of notes, Lance Barlow indicates that while they knew each other from living in the same area, he never saw Petitioner with Dinardo. (Exh. J.)

In Detective McMahon's police report, summarizing the interview with Lance Barlow, there is no mention of Raymond Barlow or any potential impeachment evidence.

(Exh. J.) Further, in the report, Detective McMahon misrepresented Lance Barlow's statement, reporting that Lance Barlow had seen Petitioner with Dinardo in the past (the notes from the interview reflect the opposite). (Exh. J.)

In a recently discovered inter-office memo, D.A. Lopez acknowledges that the D.A.'s Office had the case file for Raymond Barlow and impeachment evidence regarding Dinardo – that he had received a benefit of leniency in the past in exchange for falsely implicating another individual. (Exh. H.) The evidence suggests that Raymond Barlow's false arrest by Long Beach Police Department was based upon information provided by Dinardo in exchange for leniency in a pending criminal case where he pled to a misdemeanor and received a probation disposition in exchange for the information that he provided on Barlow. (Exh. H.) At the time that she authored the memo, D.A. Lopez was aware of the above Long Beach Police Department interview of Lance Barlow and the evidence discovered related to Dinardo, as Lance Barlow was a named witness for the prosecution. (Exh. H.) In her memo, D.A. Lopez reported that she would not be providing the *Brady* evidence related to Barlow and Dinardo the Petitioner's attorney. (Exh. H.)

Lance Barlow was not called as a witness for the State.

b. The State Suppressed Evidence Concerning Informant Dinardo

As noted earlier, the due process duty to disclose evidence is not contingent upon a defense request for the evidence. (*United States v. Agurs* (1976) 427 U.S. 97, 107.) However, "the presence or absence of a specific request at trial is relevant to whether evidence is material under this test." (*People v. Uribe* (2008) 162 Cal.App.4th 1457, 1472.) "[I]n determining whether evidence was material, 'the reviewing court may consider directly any adverse effect that the prosecutor's failure to respond might have had on the preparation or presentation of the defendant's case.'" (*In re Steele* (2004) 32 Cal.4th 682, 701.)

Moreover, "an incomplete response to a specific request not only deprives the defense of certain evidence, but also has the effect of representing to the defense that the

evidence does not exist. In reliance on this misleading representation, the defense might abandon lines of independent investigation, defenses, or trial strategies that it otherwise would have pursued." (*In re Steele, supra,* 32 Cal.4th at p. 700.) "And the more specifically the defense requests certain evidence, thus putting the prosecutor on notice of its value, the more reasonable it is for the defense to assume from the nondisclosure that the evidence does not exist, and to make pretrial and trial decisions on the basis of this assumption.'" (*In re Steele, supra,* 32 Cal.4th at p. 700; *People v. Uribe*, *supra,* 162 Cal.App.4th at p. 1472.) Thus, "the reviewing court should assess the possibility that such effect might have occurred in light of the totality of the circumstances and with an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's incomplete response. (*United States v. Bagley, supra,* 473 U.S. at p. 683.)

The prosecution withheld evidence concerning the extent to which Dinardo benefitted as an informant from his testimony in Petitioner's case as well as at least one other case. Specifically, the prosecution failed to disclose the following impeachment material: 1) the prosecution's record of Dinardo acting as an informant in the past and obtaining a reduced charge and sentence in exchange for false evidence implicating Raymond Barlow;[9] 2) the prosecution's repeated offers of leniency to Dinardo in exchange for his testimony against Petitioner; 3) the prosecution's continued suppression of the letter from Dinardo to Petitioner's counsel regarding his claim of innocence and challenges to his statement to police as an unlawful, coerced confession.

The *Brady* evidence related to Dinardo presents almost identical to the *Goldstein* case – in every respect. The California Central District Court's decision granting relief to Goldstein based upon the *Brady* violations is attached hereto for direct comparison.

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[9] It is apparent that Dinardo fit the basic profile of the dishonest informants that the Grand Jury Report found to be highly active in Los Angeles County around the time of Petitioner's case. (See Exh. R, at p. 170-171 ["Based on other presented to it, the Grand Jury believes that the experiences and perceptions of these informants generally reflect those of the informant population at large."]; see also Exhs. H, I [Dinardo's Criminal History] , L, BB.)

Much as in the *Goldstein* case, the Long Beach District Attorney's Office built its case against Petitioner almost entirely upon informant Dinardo. Again, much as in the *Goldstein* case, the prosecution also relied entirely upon eyewitness testimony to make up the rest of the evidence, as they had no physical evidence. However, in the present case, none of the eyewitnesses ever identified Petitioner from the line-ups. Again, oddly similar to the *Goldstein* case, all of the initial witness reports to police included the description of the suspects as men of color - here "Mexican," not Caucasian (both Goldstein and Murdoch are Caucasian). (See Exhs A, GG.) Another extremely troubling fact common to both cases, was evidence of a second crime, close in time, with shared facts that was reported and, inexplicably, either not investigated by Long Beach Police, or not acknowledged by Long Beach Police. (See Exh. S, at p. 28 [Reports of similar shooting incidents at the same location a week or two after the crime was reported by a witness but no law enforcement acknowledged the incident/evidence].) The present case shares the same basic simplicity based upon a complete lack of evidence related to the original investigation, as summarized by the *Goldstein* court:

> The prosecution introduced no physical evidence linking petitioner to the crime. There were no fingerprints recovered that matched petitioner's. No blood or other evidence linking petitioner to either the murder victim or the shooting was found in a search of petitioner's [belongings]. No gun was introduced, nor did the prosecution introduce any evidence that petitioner ever owned a gun [identified in the offense]. In fact, other than [the interested informant's] testimony, the prosecution introduced no evidence that petitioner had ever met the murder victim.

(Exh. S, at p. 29.) Moreover, in both *Goldstein* and the present case, the prosecution did its very best to skirt around *Brady* requirements, by delaying sentencing for the informants until *after* they provided testimony as informants. (See Exh. AA, Exh. S, at p. 33 [Fink's sentencing took place two days after he testified]; see also Exh. R [the Grand Jury found that the L.A. District Attorney's Office purposefully delayed providing leniency until after providing testimony].) As a result, the interested informant testimony

in both *Goldstein* and the present case were of "pivotal importance," and the prosecution owed a special duty of care to disclose impeachment evidence.

c. The Suppressed Evidence of Dinardo As An Informant Was Material

It is well established that evidence impeaching the credibility of a government witness must be disclosed by the prosecution. (See *Giglio v. United States* (1972) 405 U.S. 150, 154.) In general, where the credibility of a government witness is important to the case, "evidence of any understanding or agreement as to the future prosecution would be relevant to his credibility and the jury was entitled to know of it." (*Id.*)

Here, given the weakness of the prosecution's case and significance of Dinardo's testimony combined with the long-standing recognition that criminals who have been provided with benefits in exchange for their testimony are inherently unreliable, the prosecution's duty to disclose any evidence bearing on Dinardo's credibility was particularly acute in this case. (See *Lee v. United States* (1952) 343 U.S. 747, 757 ["The use of informers, accessories, accomplices, false friends, or any of the other 'betrayals' which are 'dirty business raise serious questions of credibility]; *Carriger v. Stewart* (9th Cir.1997) 132 F.3d 463, 479 ["We have previously recognized that criminals who are rewarded by the government for their testimony are inherently untrustworthy, and their use triggers an obligation to disclose material information to protect the defendant from being the victim of a perfidious bargain between the state and its witness."]; see also Grand Jury Report, Exh. at p. 179 [investigation of the use of informants between 1979 and 1990 found that interested informants had repeat incidents of perjury and providing false information to law enforcement].)

As acknowledged repeatedly by the Long Beach District Attorney's Office and even Judge Sheldon, Dino Dinardo was the key witness and the *only* evidence implicating Petitioner. (See *In re Pratt* (1999) 69 Cal.App.4th 1294, 1304, 1307 [key witness testified at trial that he was not working for law enforcement; information subsequently came to light regarding his close relationship with law enforcement authorities and his motive to curry favor with same]; see also *Carriger v. Stewart*, *supra,* 132 F.3d at p. 480

[informant was state's only direct witness; basic issue for jury was whether informant was telling the truth when he blamed crimes on defendant].) Because the State suppressed and delayed the release of evidence, Dinardo was never rigorously and thoroughly impeached, and his motives for testifying against Petitioner were never exposed in front of the jury. (See *In re Pratt, supra*, 69 Cal.App.4th at p. 1317, [if disclosed, information would have presented "potentially devastating cross-examination or other impeachment evidence regarding [the witness] in important respects"]; *Singh v. Prunty* (9th Cir. 1998) 142 F.3d 1157, 1163 [prosecutor conceded disclosure that witness was receiving benefits for testimony might have been "kiss of death" to state's case].) The only other evidence implicating Petitioner was the underwhelming and unreliable eyewitness identification from witnesses (evidence which Judge Kozinski referred to as "weak tea" in his dissent) who were unable to identify both Petitioner and Dinardo in prior line-ups. (See *Murdoch v. Castro, supra*, 609 F.3d at p. 1009.)

In *In re Pratt, supra*, 69 Cal.App.4th at page 1319, the Court of Appeal declared itself "unable to express confidence in a guilty verdict based solely on evidence unconnected to [the witness in question]." Similarly, the undisclosed information regarding Dino Dinardo's history of providing false evidence in exchange for leniency in prosecution of his criminal liability undermines confidence in the outcome of the trial as well as the prosecution's planned leniency in exchange for his testimony. Indeed, it well established that evidence impeaching the credibility of a government witness must be disclosed by the prosecution. (See, e.g., *Giglio v. United States, supra*, 405 U.S. at p. 154.)

Here, given the admittedly weak prosecution case and the overwhelming significance of Dinardo's testimony, combined with the long-standing recognition that criminals who have been provided benefits in exchange for their testimony are inherently unreliable, the prosecution's duty to disclose any evidence bearing on Dinardo's credibility was particularly critical in this case. (See, e.g. *On Lee v. United States* (1952) 343 U.S. 747, 757 ["The use of informers, accessories, accomplices false friends, or any

other betrayals which are 'dirty business' may raise serious questions of credibility"]; *United States v. Brooke* (9th Cir. 1993) 4 F.3d 1480, 1489 [noting that "[f]ull disclosure of all relevant information concerning their past record and activities through cross-examination and otherwise is indisputably in the interests of justice" where the government relies upon criminal witnesses]; *United States v. Bernal-Obeso* (9th Cir. 1993) 989 F.3d 331, 333 [taking judicial notice of the fact that "The use of informants to investigate and prosecute persons engaged in clandestine criminal activity is fraught with peril."]; *In re Pratt, supra,* 69 Cal.App.4th at p. 1319; see also Grand Jury Report, Exh. R, p.179 [finding that informants who testified before the Grand Jury all admitted repeated instances of perjury and providing false evidence to law enforcement and the Court].)

The prosecution failed to turn over the evidence that Dinardo's testimony was extremely unreliable based upon his own repeated claims that his statement was false and coerced. Additionally, the prosecution suppressed the evidence that Dinardo was an informant who had a history of receiving a benefit in exchange for false statement to law enforcement in at least one earlier case. In suppressing this evidence, the prosecution repeatedly conducted itself counter to the constitutional principles related to its *Brady* obligations when relying almost entirely upon unreliable informant testimony. Given the ultimate importance of Dinardo's testimony to the State's case and the very real and likely possibility that Dinardo could have fabricated his statement implicating Petitioner in order to cut his sentence by 20 years or more, any information revealing his possible motivation for testifying was material. (See *Brooke, supra*, 4 F.3d at p. 1489; Exh. S at p. 39.) It further follows that the State's suppression of this evidence was prejudicial as there is more than a reasonable likelihood that had the suppressed impeachment evidence been disclosed, then the jury would not have convicted Petitioner.

2. Officer's Misconduct And Informant Program

a. Factual and Procedural Background of Use of Informants

L.A. Grand Jury Report 1989-1990

In 1990, the L.A. Grand Jury published a report of its findings following a multi-year investigation of the use of informants by the Los Angeles District Attorney's Office and the Los Angeles Sheriff's Department. (See Exh. R.) The Grand Jury's report documented a criminal justice system that relied upon the often-perjurous testimony of informants, and an egregious, intentional government disregard for constitutional protections. (Exh. R.) This report includes transgressions of Long Beach authorities, but much of the reported misconduct is not specifically identified by region within L.A.

The report noted that "[t]he Grand Jury's investigation of the use of jailhouse informants focused on the Central Jail and the Hall of Justice Jail." (Exh. R, at p. 47.) In its findings, it was reported that the Los Angeles District Attorney recognized that a witness's history as an informant – including whether they had informed previously, how many times, and what they had received in exchange for their testimony – could be used by defendants to impeach that witness. (Exh. R, at p. 115.) In addition to preventing defendants from impeaching government witnesses, senior managers within the Los Angeles District Attorney's Office testified to the Grand Jury that they wanted to avoid fighting the time-consuming discovery motions and avoid burdening sheriff's deputies by requiring them to testify on informant matters. (Exh. R, at pp. 115-116.) In this context, the District Attorney's Office had a policy or practice of waiting until after the informant gave testimony to name the exact consideration that would be given. (Exh. R, at pp. 76-81.) This allowed the informant witness to bolster their credibility in front of the jury. (Exh. R, at pp. 11-12.) The Grand Jury found numerous cases where the informants had committed perjury on behalf of the prosecution. (Exh. R, at pp. 16-19, 90-91.) However, the Grand Jury did not identify a single case where District Attorney's Office corrected the false evidence or charged the informants with perjury. (Exh. R, at p. 90.)

Thomas Goldstein, Long Beach Case – 24 years Wrongfully Imprisoned

In 2002, the federal district court found, "It is readily apparent that [the informant] fits the profile of the dishonest jailhouse informant that the Grand Jury Report found to be highly active in Los Angeles at the time of Goldstein's conviction." (Exh. S, at p. 93.) As summarized by the *Goldstein* court:

> The prosecution introduced no physical evidence linking petitioner to the crime. There were no fingerprints recovered that matched petitioner's. No blood or other evidence linking petitioner to either the murder victim or the shooting was found in a search of petitioner's [belongings]. No gun was introduced, nor did the prosecution introduce any evidence that petitioner ever owned a gun [identified in the offense]. In fact, other than [the interested informant's] testimony, the prosecution introduced no evidence that petitioner had ever met the murder victim.

(Exh. S, at p. 29.) Moreover, the prosecution delayed sentencing for the informant until after he provided testimony. (See Exh. S, at p. 33 [Fink's sentencing took place two days after he testified].)

In affirming the habeas grant, the Ninth Circuit found that the government had suppressed "critical impeachment evidence" related to the informant. (*Goldstein v. Harris* (9th Cir. 2003) 82 Fed.Appx. 592, 593.) In addition, the Ninth Circuit found that the prosecution's presentation of the informant's false testimony violated Goldstein's right to due process under *Napue v. Illinois*. (*Id.* at p. 594.) While the federal courts did not make the above findings until after Petitioner's 1995 trial, the circumstances which the court relied upon in granting relief were set forth largely in the 1989-1990 Grand Jury report.

Further, as noted in the Introduction, there have been several other Long Beach cases that were secured by false informant testimony that have been overturned.[10] Of

[10] Long Beach wrongful conviction cases and *exonerations* based upon *Brady* violations related to informants and law enforcement and prosecutorial misconduct include the following 6 cases: (1) *People v. Samuel Q. Bonner,* Case No. A026128 [Bonner was released in 2022 after serving 37 years based upon the State's *Brady* violations and false

note, two of those convictions were overturned immediately after the Grand Jury report was filed, in 1990. The *People v. Arthur Grajeda and Senon Grajeda,* Case No. A034284 was dismissed in 1990 based upon the State's admitted Brady violations and the improper reliance upon false evidence from an informant and related police misconduct. The dismissal of the two cases were directly connected to the findings of the Grand Jury Report. Petitioner notes that the above evidence of a pattern or practice of misconduct is relevant and applicable to Petitioner's case. Petitioner maintains that the evidence constitutes government misconduct that should have been disclosed to the defense and presented to the jury.

b. The State's Suppression of Officer Misconduct Constitutes a *Brady* Violation Under *Milke*

> The jury [had] nothing more than [the detective's] word that Milke confessed. Everything the [S]tate claims happened in the interrogation room depends on believing the detective's testimony. Without [his] testimony, the prosecution had no case against Milke[.] [T]he Constitution requires a fair trial, and one essential element of fairness is the prosecution's obligation to turn over exculpatory evidence. This never happened in Milke's case and so the jury trusted [the detective] without hearing of his long history of lies and misconduct.

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evidence from an informant and related police misconduct]; (2) *People v. Oscar Lee Morris*, Case No. A025767 [Morris was released in 2000 having served 17 years after being wrongfully convicted based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]; (3) *People v. Thomas Goldstein*, Case No. A020746 [Goldstein was released in 2004 after serving 25 years based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]; (4) *People v. Barry Williams*, Case No. A623377 [Williams was released in 2021 after serving approximately 35 years based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]; (5) & (6) *People v. Arthur Grajeda and Senon Grajeda,* Case No. A034284 [Arthur and Senon Grajeda were released in 1990 based upon the State's *Brady* violations and false evidence from an informant and related police misconduct]. Petitioner asks this Court to take judicial notice of these cases and the findings of fact as set forth by the courts that ultimately exonerated the individuals.

(*Milke v. Ryan* (9th Cir. 2013) 711 F.3d 998, 1002–03.)

In 1990, a jury convicted Debra Milke of murdering her four-year-old son based solely upon the testimony of Officer Armando Saldate, Jr. Officer Saldate testified that Milke, then twenty-five years old, had waived her *Miranda* rights and confessed during an interrogation. There were no other prosecution witnesses or direct evidence linking Milke to the murder. The judge and jury believed Saldate, and found Milke guilty of capital murder. However, the jury didn't know about Saldate's long history of lying under oath and other misconduct. The state knew about this misconduct but failed to disclose it, despite the requirements of *Brady* and *Giglio v. United States* (1972) 405 U.S. 150, 153–55. The Ninth Circuit found the State's suppression of Officer Saldate's prior misconduct to be unconstitutional under *Brady* and reversed Milke's conviction.

"As more than two decades passed while Milke lived on death row, exoneration reform expanded and litigation exposed the reality of wrongful convictions, including those based on *Brady* violations and false confessions procured through coercive interrogations or fabricated by police officers." (Reflections on the *Brady* Violations in *Milke v. Ryan*: Taking Account of Risk Factors for Wrongful Conviction; Catherine Hancock, NY 2015.) In *Milke*, the Ninth Circuit found that post-conviction counsel's discovery of the court records concerning Officer Saldate's past misconduct revealed a "pattern" of misconduct and constituted "highly relevant" and "highly probative" evidence that "would certainly have cast doubt" on the detective's credibility if used to impeach his testimony at trial. (*Milke, supra*, 711 F.3d at p. 1008.) Ultimately, the court found that the State suppressed the past officer misconduct when it failed to affirmatively provide the information to the defense in pre-trial discovery, preventing Milke from presenting a defense, and the court reversed her conviction under *Brady* and *Giglio*. (*Id*. at p. 1019.)

Any evidence that would tend to call the State's case into doubt is favorable for *Brady* purposes. (*Milke, supra*, 711 F.3d at p. 1012, citing *Strickler, supra*, 527 U.S. at p. 290.) In the present case, the evidence of a pattern of misconduct in the use of

informants in Long Beach, the evidence wrongful convictions resulting from the use of informants in Long Beach, and the specific factual evidence set forth in the *Goldstein* case provides supporting evidence "that would tend to call the State's case into doubt." This is especially true given the pivotal role that Dinardo played in securing Petitioner's conviction for the State despite the complete and utter lack of reliable evidence connecting Petitioner to the crime or even to Dinardo.

Comparably, in *Milke*, the court found that evidence of the officer's past misconduct would have been useful to the jury in determining whether the officer or the defendant was telling the truth. (*Ibid.*) Moreover, the court found that the past evidence of misconduct showed that the officer "lied under oath in order to secure a conviction or to further a prosecution" in past cases, and the same law enforcement and prosecutorial agencies were involved in those cases. (*Id.* at p. 1013.) Ultimately, the court found that if Milke had been able to present the jury and judge with evidence of the officer's past "menagerie of lies and constitutional violations," she likely would have been able to develop "legitimate questions concerning guilt." (*Id.* at p. 1015.)

The courts have long held that the State bears a *Brady* obligation "to produce any favorable evidence in the personnel records" of an officer. (*Milke, supra,* 711 F.3d at p. 1016, citing *United States v. Cadet* (9th Cir. 1984) 727 F.2d 1453.) Moreover, a defendant does not have to make an affirmative request for exculpatory or impeachment evidence: "[T]he duty to disclose [exculpatory] evidence is applicable even though there has been no request by the accused, and ... the duty encompasses impeachment evidence as well as exculpatory evidence." (*Strickler, supra*, 527 U.S. at p. 280.) In *Milke,* the court found that the evidence of the misconduct and constitutional violations had an obligation to produce the documents related to the misconduct as they "no doubt knew of this misconduct... [and t]he police must have known, too." (*Milke, supra,* 711 F.3d at p. 1016.)

Much as in *Milke,* the prosecution's suppression of the evidence that Dinardo was an informant within the context of Los Angeles County's troubling history of using

unreliable informants to secure convictions that are often counter to constitutional protections. The suppression of this evidence prevented Petitioner from presenting a defense related to his cold case prosecution based entirely upon unreliable informant testimony. Here, just as in *Milke*, the government misconduct related to the use of informant testimony presented a pattern that was well documented in the Grand Jury Report 1989-1990. As in *Milke*, the pattern of misconduct could have been presented as a defense. In this context, the suppressed pattern of misconduct was a violation of *Brady*, and the suppression prevented Petitioner from presenting a complete defense.

ii. The Suppression Prejudiced Petitioner's Defense

"To find prejudice under *Brady* and *Giglio*, it isn't necessary to find that the jury would have come out differently. (Citation.) Prejudice exists "when the government's evidentiary suppression undermines the confidence in the outcome of the trial. (Citation.)" (*Milke, supra*, 711 F.3d at p. 1018.) In *Milke*, the court found that the suppression of the lead investigator's past misconduct was prejudicial because the officer's testimony was the only evidence linking Milke to the murder, thus his credibility was critical.

In the present case, just as in *Milke* and *Goldstein*, the suppressed government misconduct prevented the jury from understanding the context of the testimony in the case and making an accurate judgment of its reliability. Had the jury been presented this evidence along with Long Beach's pattern or practice of relying upon an informant program for convictions, the jury would have been given reason to seriously doubt the reliability of the State's primary evidence. The State's suppression undoubtedly prejudiced Petitioner as "the government's evidentiary suppression undermine[d] the confidence in the outcome of the trial. (Citation.)" (*Milke, supra*, 711 F.3d at p. 1018.) Accordingly, this *Brady* violation requires reversal of Petitioner's conviction.

VI. THE PROSECUTION PRESENTED FALSE TESTIMONY AND FALSE EVIDENCE THROUGHOUT PETITIONER'S TRIAL, UNDERMINING THE CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *BRADY* AND *NAPUE*

In this case, the State suppressed evidence related to initial investigation and likely suspects as well as impeachment evidence related to the State's primary informant witness, Dinardo. The State instead prosecuted an innocent man over a decade after the crime, with contrary eyewitness accounts and a reluctant informant who denied the truth of his statement. In fact, the State presented no reliable evidence at all. Here, the prosecution relied almost entirely upon a coerced statement from a known informant that they knew or should have known was false.

This was seemingly the common practice of the Long Beach District Attorney's Office, working in concert with the Long Beach Police. It was documented, in part, in the Los Angeles Grand Jury Report from 1989-1990. It is further documented by the string of wrongful convictions out of Long Beach Superior Court, which have been individually identified discussed as if a random bad apple had fallen from a tree... and not by following the basic pattern of misconduct that was originally laid out in the Grand Jury Report. (See Exh. R.) The prosecution relied almost entirely upon this false evidence, only bolstering it with the perjurous testimony of Detective Pavek. Ultimately, the prosecution's presentation of this false evidence violated Petitioner's right to due process under *Napue*.

The Supreme Court has long held that a conviction obtained using knowingly perjured testimony violates due process. (*Mooney v. Holohan* (1935) 294 U.S. 103, 112.) It has long been held that knowingly presenting false testimony to a fact-finder necessitates reversal of a conviction if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury." (*Giglio v. United States* (1972) 405 U.S. 150, 153, 154 (quoting *Napue v. Illinois* (1959) 360 U.S. 264, 271; *Dow v. Virga* (9th Cir. 2013) 729 F.3d 1041, 1047-1049.) This is known as a *Napue* violation. (See

Dow, *supra,*729 F.3d at p. 1047.) "In addition, the state violates a criminal defendant's right to due process of law when, although not soliciting false evidence, it allows false evidence to go uncorrected when it appears." (*Soto v. Ryan* (9th Cir. 2014) 760 F.3d 947, 957-958; *Reis-Campos v. Biter* (9th Cir. 2016)832 F.3d 968; *Alcorta v. Texas* (1957) 355 U.S. 28.

The Supreme Court in *Napue* held that "a conviction obtained through use of false evidence, known to be such by representatives of the State," violates the Fourteenth Amendment. (*Napue, supra*, 360 U.S. at p. 269.) Prosecutorial misconduct in the form of false testimony violates the constitutional rights of the defendant and requires a reversal of the conviction if the following three elements are met: "(1) the testimony was actually false, (2) the prosecutor knew it was false, and (3) the false testimony was material (i.e., there is a reasonable likelihood that the false testimony could have affected the judgment)." (*Dow, supra*, 729 F.3d at p. 1050; citing *Napue,* 360 U.S. at 271-72); see also *Alcorta v. Texas* (1957) 355 U.S. 28, 31 [the state cannot allow a witness to give a material false impression of the evidence].)

Napue applies whenever a prosecution "'knew or should have known that the testimony was false.'" (*Hayes v. Brown* (9th Cir. 2005) 399 F.3d 972, 984 (en banc).) As described in the previous claims, the prosecution knew or should have known that Detective Pavek's testimony was false based upon the evidence of the case, and that Dinardo's testimony was unreliable and possibly false as an interested informant. (*Kyles, supra*, 514 U.S. at p. 438 ["any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials"]; *Giglio, supra,* 405 U.S. at p. 154 [whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor].) If the prosecutor has a duty to investigate and disclose favorable evidence known only to the police, he "should know" when a witness testifies falsely about such evidence. (*Jackson v. Brown* (9th Cir. 2008) 513 F.3d 1057, 1075.) The prosecution in

the present case had a duty to correct the false testimony of Detective Pavek and Dinardo, and the prosecution's failure to correct the testimony violated Petitioner's right to due process.

A. Factual Background

Petitioner incorporates the background of Dinardo's testimony in this case as it is set forth in full above, including his initial suppression motion and handwritten statement acknowledging his confession to police as coerced and false. Dinardo denied having received any leniency in a prior criminal case for identifying a third party. (RT 268.)

In his testimony at trial, Dinardo largely restated his recorded confession to police. At trial, Petitioner was not able to cross-examine Dinardo regarding the letter or the suppression motion, as he did not have access to the substance of either. Dinardo testified that he knew Petitioner in the early 1980's, and he was pretty sure that he had known him in the 1970's, when they were kids. However, Dinardo did not know Petitioner by name. (RT 730.) Dinardo testified that Petitioner had approached him in West Long Beach on May 17, 1983, and asked him if he wanted to "do a job," to make some money. (RT 731-732.) Following this exchange, Dinardo testified that he was told that Petitioner and another individual would be armed with a knife and a gun, and he would be responsible for grabbing the cash out of the register. (RT 733-734.) Dinardo further testified that he saw Petitioner and another individual armed with a knife and gun while they were on the way to the bar. (RT 745.) They suggested that Dinardo should also be armed, but he refused. (RT 745.)

Dinardo testified that he was able to get the register open with some trouble, and he pocketed the $200 that he found inside. (RT 740-741.) He stated that the money was split evenly amongst them. (RT 743.) Dinardo testified that he never knew that anyone had been shot or stabbed during the robbery until he was arrested in 1994. (RT 743-744.) Following his description of events surrounding the robbery, Dinardo testified about a subsequent interaction with Petitioner. Dinardo testified that Petitioner approached him

approximately a week later and asked him if he wanted to "do another job." (RT 878-878.) Dinardo said that he declined Petitioner's offer. (RT 876-878.)

Detective Pavek testified on behalf of the prosecution regarding his investigation of this case. (Exh. P.) Initially, Detective Pavek testified regarding the circumstances of the Horse Shoe Bar robbery without any mention of the second Time Out Bar robbery which took place the same night. (Exh. P; RT 885-886.) Detective Pavek then described the documentation of latent fingerprints from the bar and register without any mention of the initial identification of two suspects based upon those prints. (Exh. P; RT 890-891; see also Exhs. C, D.) Detective Pavek next testified that after May 1983, the next time that he began an investigation into the case was January 26, 1994. (Exh. P; RT 898.)

B. The Prosecution Knowingly Presented False Testimony

In Petitioner's case, the prosecution's use of false testimony through Officer Pavek's testimony at trial and Dinardo's compromised confession constituted prosecutorial misconduct which violated Petitioner's right to due process under *Napue* and *Brady*. (See *Napue v. Illinois* (1959) 360 U.S. 264, 269; *Brady v. Maryland, supra,* 373 U.S. at p. 83.) Here, the initial evidence of the second Time Out Bar robbery and latent fingerprints discovered and identified in 1983 are facts that should have been known by the prosecutor. These facts render the testimony of both Dinardo and Officer Pavek false evidence. Indeed, Detective Pavek's recounting of the "facts" related to the investigation was not merely a misstatement the facts. It was not a harmless oversight.

i. The False Evidence Was "Material" and Prejudicial

A "prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." (*Kyles v. Whitley, supra*, 514 U.S. 419 at pp. 437-438; *Strickler v. Greene* (1999) 527 U.S. 263, 280-281. Further, the Ninth Circuit has observed that "[b]ecause the prosecution is in a unique position to obtain information known to other agents of the government, it may not be excused from disclosing what it does not know but could have learned." (*Amado v.*

Gonzalez (9th Cir. 2014)758 F.3d 1119, 1134; *Carriger v. Stewart* (9th Cir. 1997) 132 F.3d 463, 480 (en banc).

In order to assess their materiality, *Napue* and *Brady* violations should be considered collectively. (*Jackson v. Brown* (9th Cir. 2008) 513 F.3d 1057, 1071 (stating that courts should evaluate the "cumulative effect of the prosecutorial errors for purposes of materiality separately and at the end of the discussion.") (citing *Kyles v. Whitley*, *supra*, 514 U.S. at p. 436 n.10) (internal quotation marks omitted).) If the *Napue* errors are not material standing alone, the Court must consider the *Napue* and *Brady* errors together and determine whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Id*.)

In this case, whether relief is warranted hinges upon the definition of "materiality" under *Napue* and *Brady*. It is well-established that a *Napue* violation is "material" and results in the reversal of a conviction "if the false testimony could in any reasonable likelihood have affected the judgment of the jury." (*Dow v. Virga* (9th Cir. 2013) 729 F.3d 1041, 1047 (citing *Napue*, *supra*, 360 U.S. at p. 271; and *Giglio v. United States* (1972) 405 U.S. 150, 153.) Although the government's knowing use of false testimony does not per se require reversal, the *Napue* materiality standard is "less demanding" than "ordinary" harmless error review. (See *Dow, supra*, 729 F.3d at p. 1048 (citations omitted).) Furthermore, in discussing materiality under *Napue*, the Ninth Circuit has "gone so far as to say that 'if it is established that the government knowingly permitted the introduction of false testimony, reversal is virtually automatic.'" (*Jackson, supra*, 513 F.3d at p. 1076 (quoting *Hayes, supra,* 399 F.3d at p. 978) (emphasis added). Thus, the question of materiality is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a "verdict worthy of confidence." (*Hayes, supra*, 399 F.3d at p. 984 (citations omitted).)

Ultimately, the false testimony of both Dinardo and Detective Pavek directly contributed to Petitioner's conviction, as they reinforced each other's narrative. Indeed,

both testified as to circumstances of a singular bar robbery that is counter to the evidence set forth in the press release and general information regarding the second bar robbery. Moreover, the very fact of a second bar robbery with a second set of witnesses is counter to the prosecution's theory of the case and all of the evidence presented. Accordingly, the testimony of Dinardo and Detective Pavek which created a false premise of a singular bar robbery with no initial suspects was counter to all available evidence from the initial investigation. The prosecution either knew or should have known that this evidence was false based upon this fact alone, without even considering Dinardo's repeated claims that his statement and confession were false.

Ultimately, the false testimony impacted the fairness of Petitioner's trial, and now casts extreme, grave doubt on whether the verdict can be viewed as "worthy of confidence" given the evidence presented to this Court. To assess the materiality of this error, the Court need look no further than the direct impact of the false testimony. This is not a case where the false testimony could have had any other impact than to contribute to the wrongful conviction of Petitioner. The prejudice is undeniable. Petitioner's conviction secured by the false testimony of the State's witnesses must be reversed.

VII. THE STATE FAILED TO MAINTAIN MATERIAL AND EXCULPATORY EVIDENCE THAT UNDERMINED CONFIDENCE IN THE OUTCOME OF PETITIONER'S TRIAL IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER *BRADY, TROMBETTA,* AND *YOUNGBLOOD*

The prosecution's duty to disclose and retain evidence stems from the due process clause of the United States Constitution, as explained and interpreted by the three leading United States Supreme Court decisions on this subject — *Brady v. Maryland* (1963) 373 U.S. 83; *California v. Trombetta* (1984) 467 U.S. 479, and *Arizona v. Youngblood* (1988) 488 U.S. 51 (*Youngblood*). As set forth in full in the prior claim, *Brady* is the leading case on the duty to disclose exculpatory evidence. "[T]he suppression... of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or to punishment, irrespective of the good faith or bad faith of the

prosecution." (*Brady*, *supra*, 373 U.S. at p. 87.) Such evidence must be disclosed if it is material, that is, if there is a reasonable probability the evidence might have altered the outcome of the trial. (*United States v. Bagley* (1985) 473 U.S. 667, 682.)

The duty to retain, rather than simply disclose, potentially exculpatory evidence is somewhat different. *Trombetta* concerned a driving under the influence case involving two drivers. The *Trombetta* court found that although breath samples taken from the defendant had not been preserved, the test results were nonetheless admissible. The court rejected the defendant's argument that the state had a duty to retain the samples for a number of reasons. The police officers were acting in good faith and according to normal procedure, the chance the samples would have been exculpatory were slim, and defendants had other means to prove their innocence. (*Trombetta*, *supra*, 467 U.S. at pp. 488-490.) "Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, [citation], evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." (*Id.* at pp. 488-489, fn. omitted.)

Youngblood, the most recent of the three cases, explains the requirements for demonstrating a due process violation based on the failure to retain evidence under somewhat different circumstances. *Youngblood* was a sexual assault case in which the state had failed to properly preserve fluid samples from the victim's clothing and body. Unlike the situation in *Trombetta*, where the evidence was destroyed after all relevant testing was complete, in *Youngblood*, only limited testing was initially performed to determine whether sexual contact had indeed occurred. (*Youngblood*, *supra*, 488 U.S. at p. 53.) By the time more rigorous testing was attempted, it was no longer possible, because the victim's clothing had been improperly refrigerated. (*Id.* at p. 54.) The defendant's principal argument was mistaken identity, and he argued that if the victim's

clothing had been properly preserved, the physical evidence might have exonerated him. (*Ibid.*) The defendant was found guilty, and ultimately, the Supreme Court upheld the conviction.

The court stated: "The Due Process Clause of the Fourteenth Amendment, as interpreted in *Brady,* makes the good or bad faith of the State irrelevant when the State fails to disclose to the defendant material exculpatory evidence. But we think the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." (*Youngblood*, *supra*, 488 U.S. at p. 57.) As explained in *Trombetta,* determining the materiality of permanently lost evidence can prove problematic. The court also declined to impose on the police an absolute duty to retain and preserve anything that might possibly have some significance. (*Id.* at p. 58.)

Accordingly, "We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, *i.e.,* those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant. We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." (*Youngblood*, *supra*, 488 U.S. at p. 58.) The court held that at worst, the conduct of the police in *Youngblood* could at best be characterized as negligent. (*Ibid.*)

Thus, there is a distinction between *Trombetta's* "exculpatory value that was apparent" criteria and the standard set forth in *Youngblood* for "potentially useful" evidence. If the higher standard of apparent exculpatory value is met, the motion is granted in the defendant's favor. But if the best that can be said of the evidence is that it was "potentially useful," the defendant must also establish bad faith on the part of the

police or prosecution. (See *Youngblood*, *supra*, 488 U.S. at p. 58; *Trombetta*, *supra*, 467 U.S. at pp. 488-489.)

In the present case, the post-conviction discovery process has revealed that the State has not maintained the evidence related to the Time Out Bar robbery. The exculpatory nature of the evidence was known at the time of its loss or destruction. However, even if the Court were to find that the lost and destroyed evidence was only "potentially useful" to Petitioner's defense or exoneration, then there is overwhelming and substantial bad faith that pervades this case which satisfies the required showing so as to rise to the level of a due process violation.

A. Factual and Procedural Background

As set forth in the original *Brady* claim above in full, the underlying case was connected to a second bar robbery that took place immediately after the Horse Shoe Bar robbery and involved the same three Latino suspects. (See Exhs. A, B.)

The Long Beach Police Department issued a Press Release detailing the reports of two bar robberies committed in Long Beach committed on May 17, 1983. (Exh. A.) The release noted that Chris's Horse Shoe Bar had been robbed by "three male Mexican suspects," at approximately 9 p.m. During the robbery, one suspect armed with a rifle shot a patron who later died and another suspect stabbed a separate patron as the suspects fled. The release suggests that the suspects left the bar without actually taking any money. The release reads, "[t]he three suspects apparently frightened by the sudden action, fled from the bar." (Exh. A.) Approximately an hour later, "three male Mexican suspects," closely resembling the suspects from the earlier bar robbery, robbed the Time Out Bar. The release identified Detectives Pavek and MacLyman as the investigating officers for both robberies. (Exh. A.)

Petitioner located an excerpted article from the Long Beach Press Telegram newspaper, published on or about May 18, 1983, provided a description of the two bar robberies, by Lt. Reed of the Long Beach Police Department. (Exh. A.) Lt. Reed described the Horse Shoe Bar and Time Out Bar robberies as committed by "the same"

three "Mexican" individuals. (Exh. A.) Lt. Reed reported that the "trio fled without getting any money" from the Horse Shoe Bar. Lt. Reed could not verify if the trio took any money from the Time Out Bar. However, the Time Out Bar bartender, Keith McKee reported that $133 had been taken from the register by a suspect with a .45 caliber gun. (Exh. A.)

In the 2023 discovery from the District Attorney's Discovery Unit, Petitioner received a random page of officer notes (on the same lined paper as the officer notes from the 1983 investigation of the Horse Shoe Bar robbery) which identifies a witness who saw a car driving Westbound on "Pacific." (Exh. B.)

The foregoing cited evidence is the only remaining evidence maintained by the State regarding the Time Out Bar robbery. The evidence of the second bar robbery would have constituted the material, potentially exculpatory and exculpatory evidence that the State failed to collect and maintain under *Trombetta*.

B. The "Lost" or "Unretained" Evidence Constitutes a Violation of Due Process Under *Trombetta/Youngblood*, Requiring Reversal

In considering the evidence of a *Trombetta/Youngblood* claim, the court must first inquire whether the lost or destroyed evidence held by the state meets either the "exculpatory value that was apparent" or the "potentially useful" standards for materiality under *Trombetta* or *Youngblood*. (See *Youngblood*, *supra*, 488 U.S. at p. 58; *Trombetta*, *supra*, 467 U.S. at pp. 488-489.) Second, if the evidence qualified as "potentially useful" under *Youngblood* but did not meet the *Trombetta* standard, was the failure to retain it in bad faith? (*Youngblood*, *supra*, 488 U.S. at p. 58.)

Initially, Officers Pavek and MacLyman lead the investigation of the Horse Shoe Bar robbery as well as the Time Out Bar robbery. (See Exh. A.) The two Long Beach bar robberies which took place an hour apart, were reported as involving the same three Latino male suspects. This basic evidence is counter to the State's theory of the case and the evidence presented by the State's witnesses, including Officer Pavek. The record is devoid of any evidence which might explain the gaping hole in the investigation. There

is literally no reference to the Time Out Bar robbery by any government actor after the Long Beach Police Department press release. Given the fact that it was a violent crime at a public place, the omission is striking. Given its relevance to the underlying case and prosecution, the omission is extremely troubling. Undoubtedly, this evidence was more than "potentially useful" for Petitioner. The evidence of this bar robbery would have dismantled the State's entire case, and it would render all of the presented testimony categorically false, as both Dinardo and Detective Pavek describe a singular bar robbery devoid of any other bar robbery.

However, should the Court find that the Time Out Bar robbery investigation was "potentially useful," then Petitioner suggests that there is sufficient evidence it was not maintained due to of bad faith of conduct of the State. Indeed, the State's failure to collect and maintain the investigation evidence, as normally done in the regular course of investigation, is evidence of bad faith, especially in light of the corresponding *Brady* violations.

1. Materiality

As we discussed above, *Trombetta* defines material evidence as that which "might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, [citation] evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." (*Trombetta*, *supra*, 467 U.S. at pp. 488-489, fn. omitted.) Under *Youngblood*, the standard is whether the destroyed evidence, had it been subjected to analysis, was "potentially useful" to defendants. (*Youngblood*, *supra*, 488 U.S. at p. 58.)

Here, the evidence related to the Time Out Bar robbery was evidence was "material," as it was relevant as to either guilt or punishment. (See *Brady*, *supra*, 373 U.S. at p. 87.) Petitioner maintains that the evidence which was not collected, maintained or properly analyzed was material, because it was all relevant to the identification of the

responsible parties and would have established guilt, or could have served as evidence for Petitioner's potential third party culpability defense.

This case has similarities to *U.S. v. Cooper* (9th Cir. 1993) 983 F.2d 928 (*Cooper*). In that case, the defendants were charged with conspiracy to manufacture methamphetamine. (*Id.* at p. 930.) After searching the premises, various pieces of equipment were destroyed and put into large drums pursuant to Drug Enforcement Agency policy. (*Ibid.*) The government was aware the drums would only be stored for a short time before destruction. (*Ibid.*) The defendants contended they were engaged in lawful manufacturing activity. (*Id.* at p. 929.) They argued the government's destruction of the entire lab deprived them of the ability to establish their defense. The government offered no reasoning for its decision. Destruction of the evidence occurred after government investigators knew the nature of the defense and after the defendants had made several requests for return of the equipment. (*Id.* at p. 931.)

"Agents involved in the search knew that the lab was ostensibly configured to make [a legal chemical]. In conversations following the seizure, agents repeatedly confronted claims that the equipment was specially configured for legitimate chemical processes and was structurally incapable of methamphetamine manufacture. In response to defense requests for return of the equipment, government agents stated that they held it as evidence. This statement was repeated even after the equipment had been destroyed." (*Cooper*, *supra*, 983 F.2d at p. 931.) The government did not challenge the defense's argument regarding the evidence's materiality or the bad faith of the law enforcement officers, instead arguing that comparable evidence was reasonably available. (*Id.* at p. 931.) The court rejected this argument and upheld the dismissal of the indictment. (*Id.* at p. 933.) "The defendants' version of the facts, which was repeatedly relayed to government agents, had at least a ring of credibility. They should not be made to suffer because government agents discounted their version and, in bad faith, allowed its proof, or its disproof, to be buried in a toxic waste dump." (*Ibid.*)

Similarly, here, the evidence related to the Time Out Bar robbery had the potential to exonerate Petitioner. The police knew of the importance of the evidence at the time it was reviewed, and the same officers were involved in the investigation of both robberies. Thus, there is no chance that the failure to maintain this evidence was inadvertent or by the mistaken acts of a subsequent law enforcement officer. In this context, the evidence meets the *Trombetta* standard of possessing "exculpatory value that was apparent before the evidence was destroyed." (*Trombetta*, *supra*, 467 U.S. at pp. 489)

However, should this Court find that the evidence does not meet that standard, the evidence clearly meets the standard set forth in *Youngblood* as "potentially useful" to Petitioner. (*Youngblood*, *supra*, 488 U.S. at p. 58.) To the extent that the evidence is found to be "potentially useful," Petitioner sets forth *Youngblood*'s bad faith requirement below.

2. Bad Faith

If the evidence is "potentially useful" under *Youngblood*, then the court turns next to the question of whether the government acted in bad faith. (*Youngblood*, *supra*, 488 U.S. at p. 58.) In this case, Petitioner made several requests for discovery of the evidence related to the Time Out Bar robbery including reports and the corresponding evidence that should have been collected in the regular course of investigation. The single page of officer notes as provided in Exhibit B is the only evidence that has been provided in response to the requests. Thus, it must be assumed that the evidence has not been preserved by the State. Here, in light of the *Brady* violations and the importance of this critical initial evidence for the case, the failure to collect and preserve it in and of itself shows bad faith. (*Youngblood*, *supra*, 488 U.S. at p. 58.)

Moreover, the suppressed evidence recently discovered in the post-conviction process of this case reveals a pattern of misconduct and *Brady* violations by the State. As

noted above, bad faith is the only reasonable explanation for this pattern of *Brady* violations and lost and destroyed evidence in this case.

3. Remedy

With respect to the proper remedy, courts have a large measure of discretion in determining the appropriate sanction for failure to preserve material evidence. (*People v. Memro* (1995) 11 Cal.4th 786, 831.) There are few cases after *Youngblood*, where the bad faith destruction of material exculpatory evidence warranted anything less than reversal, and reversal is proper if less drastic alternatives are unavailable. (See *U.S. v. Kearns*, *supra*, 5 F.3d at p. 1254.)

For example, the *Cooper* court found that a proposed jury instruction would pale in comparison to the potential value of the destroyed evidence. (*Cooper*, *supra*, 938 F.2d at p. 932.) The destruction of the lab equipment itself deprived the defendants the ability to establish their innocence, because experts could not determine by viewing photographs whether or not the lab was constructed for methamphetamine production. (*Ibid*; see also *U.S. v. Bohl* (10th Cir. 1994) 25 F.3d 904, 914 [bad faith destruction of evidence required dismissal because the effect of destruction and dearth of adequate secondary evidence violated the defendants' due process rights].)

Moreover, it is far from obvious what lesser remedy might come anywhere close to addressing the state's bad faith failure to retain material evidence. The importance of holding the police and the prosecution to their obligations under *Brady*, *Trombetta* and *Youngblood* cannot be overstated. Police and prosecutors are more than willing to avail themselves of technology when it is to their advantage; there must be a level playing field that gives defendants equal access to the same evidence. Equal and fair treatment in this respect is nothing less than the foundation upon which due process is built. The same is true of *Trombetta* and *Youngblood*; what is so disturbing about unretained or destroyed evidence is that we can never truly know what was lost.[11] While judges must act as

[11] The defendant in *Youngblood* provides a disturbing cautionary note. Twelve years after the Supreme Court decided the case, the science had sufficiently improved over time to permit testing of the evidence in the case. The defendant was then exonerated due to

"quality control" to remedy constitutional errors, it is ultimately up to the police and prosecutors to end the failure to retain evidence or its bad faith destruction. Here, Petitioner asks the Court to consider a remedy in accordance with all of the claims and evidence presented herein. Accordingly, Petitioner asks this Court to order Petitioner's judgment and conviction reversed with a declaration of actual innocence.

V. CONCLUSION

Petitioner incorporates by reference all of the claims and evidence set forth in the attached original petition filed by Petitioner. Petitioner asks the Court to issue an Order to Show Cause, and order the State to file a Return. Ultimately, after a consideration of the evidence developed before the Court, Petitioner asks this Court to reverse his conviction an declare him "actually innocent" of the convictions this case.

Dated: April 30, 2024

Respectfully submitted,

JENNIFER M. SHEETZ
Counsel for Petitioner

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the new DNA evidence. (See Whitaker, *DNA Frees Inmate Years After Justices Rejected Plea* (Aug. 11, 2000) The New York Times, http://www.nytimes.com/2000/08/11/us/dna-frees-inmate-years-after-justices-rejected-plea.html.)

PROOF OF SERVICE

Re: *People v. Charles Murdoch*

I declare that I am over the age of 18, not a party to this action and my business address is 775 E. Blithedale Ave., PMB 146, Mill Valley, California 94941. My electronic service address is jennifermsheetz@gmail.com and jmsheetz@hotmail.com. On the date shown below, I served the within Petition for Writ of Habeas Corpus and Exhibits to the following parties hereinafter named by placing a true copy thereof enclosed in a Priority Mailing Box to the address below:

Los Angeles County District Attorney
Habeas Corpus Litigation Team
320 West Temple Street, Room 540
Los Angeles, CA 90012

I declare under penalty of perjury the foregoing is true and correct. Executed this 1st day of May 2024, at Mill Valley, California.

Jennifer M. Sheetz