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COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

SCOTT EVANS DEKRAAI,

Defendant.

Case No.: 12ZF0128

REDACTED 1) Supplemental Brief in Support of Request to Dismiss the Death Penalty; 2) Offer of Proof in Support of Release of Subpoenaed Materials; 3) Requested Order that OCSD Not Destroy Housing/Floor Logs, Sergeant's Activity Logs and Briefing Logs; 4) Request to Unseal Brief

I. SUMMARY OF BRIEF

Defendant Scott Dekraai is in recent receipt of 5653 pages of documents that the Orange County District Attorney ("OCDA") and the Orange County Sheriff's Department ("OCSD") elected to release to the Court for its review on December 6, 2016. This "document cache," as referred to in this brief and in prior moving papers, is striking on several fronts. First, its contents plainly demonstrate that Orange County's jailhouse informant program has been openly encouraged within the department and operated for decades, with its existence understood by everyone from module deputies to those serving

1 the department throughout the chain of command.¹ Second, it appears that leadership of
2 the department was fully committed to hiding critical truths in perpetuity—and would have
3 accomplished this mission if not for this Court’s rulings requiring disclosures and hearings.
4 Third, although the document cache includes revealing materials undermining the years of
5 false narratives poisoning this litigation, the disclosures also confirm that the agency is still
6 unwilling to disclose other vital evidence that would expose critical truths that bear upon
7 the additional remedies and/or sanctions that should be imposed.²

8 Both what the OCSD included in and excluded from the provided materials point to
9 the conclusion that gamesmanship continues and additional disclosures are required.
10 Before this Court determines whether to order additional disclosures requested in pending
11 subpoenas, it is requested that the agency be ordered not to destroy any existing editions of
12 the three following log categories: Sergeant’s Activity Logs, “Housing/Floor” Logs, and
13 Briefing Logs. These logs subject to relatively rapidly destruction per the 2014 OCSD
14 Retention Policies. The Sergeant’s Activity Logs and the “Housing/Floor” Logs, created
15 by module deputies as their daily activity log, can be destroyed after three years, and the
16 Briefing Logs can be destroyed after only two years. Although this Court previously
17 issued an order that particular categories of records not be destroyed, and the Board of
18 Supervisors also issued a non-destruction of informant related records in 2015, the OCSD
19 may have taken the disingenuous internal position that these logs were unrelated to the
20 informant litigation. (Orange County Board of Supervisors, Meeting Minutes, January 12,
21 2016, attached herein as Exhibit B, pp. 9-10.) It is also appropriate to question whether an
22 agency hiding the existence and scope of its jail informant program, actually prohibited the
23

24 ¹ This Court declared on the last hearing date that the county’s jailhouse informant program
25 is a settled issue requiring no further proof of its existence. (*Dekraai*, February 10, 2017,
26 R.T. 7383.) Unquestionably, though, evidence regarding its concealment and the true
27 nature of the operation, as well as continued efforts to mislead and hide, are relevant to the
28 decision regarding additional remedies and sanctions.

² A copy of subpoenas duces tecum served upon the OCSD on March 23, 2017 and March
24, 2017, are attached herein as Exhibit A.

1 destruction of logs created by module deputies, when module deputies have never
2 previously been acknowledged as being directly involved in the informant program. As
3 will be discussed herein for the first time, in fact, module deputies have been considered by
4 the OCSD a critical and highly valued component of the jailhouse informant program.
5 This makes these daily activity logs a potentially critical source of evidence—particularly
6 considering the agency's claimed inability to locate special handling logs covering large
7 expanses of time. Moreover, the agency's decision in 2014 to seek authorization to destroy
8 the **computerized** housing/floor logs after only three years is made even more unusual
9 considering this specific category of records played a central role in the investigation of the
10 custodial death of John Derek Chamberlain.

11 In the pages that follow, Defendant will analyze the need for disclosure in view of
12 critical evidence emerging from the document cache and the defendant's independent
13 investigation, which are highly relevant to rebutting any notion that all relevant disclosures
14 have been made and that the representations of the OCSD and the OCDA should now
15 suddenly be deemed trustworthy³:

- 16 1) While this Court has found that the existence of a jailhouse informant program is
17 no longer subject to dispute, the document cache offers significant insights about
18 how the program has operated, who worked on it, the quantity of informants in
19

20 ³Defendant will concurrently filed a redacted copy of this brief. However, Defendant is
21 requesting the redacted version be unsealed, as the unsealed version of this motion has
22 eliminated confidentiality and privilege issues. Toward that end, throughout this brief
23 Defendant does not reference previously undisclosed informant names or redacted
24 references to them. There are two informants mentioned by name who were not previously
25 referenced in moving papers in this case. [REDACTED], however, chose to introduce
26 his informant status during public hearings in one of his own cases. (The defense
27 independently learned of his status through its own investigation). Jeremiah Rodriguez
28 was not previously referenced, but he testified openly as an informant, and his role as an
informant was discussed in an appellate opinion and petition for Habeas filed in *People v.*
Stanley Miles Simon, discussed herein. Damon Hill's role as a jailhouse informant is
discussed at length in the same petition for habeas corpus. He was a key accomplice
witness in the four trials of his co-defendants, including Simon's.

1 place, the length of its existence, and who was aware of the effort. In sum, the
2 document cache corroborates that the jail informant program has been an
3 incredibly active operation for at least multiple decades. Numerous intra office
4 memoranda and other documents circulated openly within the agency discuss
5 and describe the need to develop and cultivate informants, the importance of
6 utilizing informants, and the details of what informants were sharing. In fact,
7 **nearly a decade ago, the Special Handling Unit asserted that it had already**
8 **cultivated hundreds of jailhouse informants.** The contents of numerous
9 documents actually suggest that the department has likely managed well over a
10 thousand informants over the past several decades. Whether in the hundreds or
11 thousands, these figures are completely irreconcilable with the testimony in this
12 case and the public representations of the OCSD. Those documents, including
13 instruction about how module deputies should manage Mod L-20, frequently
14 referred to as an “informant tank” or “snitch tank,” corroborates the jail
15 informant operation generally, and specifically clarifies that its use was far from
16 limited to advancing gang task force objectives.

- 17 2) Defendant will discuss how the evidence described above, as well as
18 independently obtained court transcripts, adds yet more to the wealth of evidence
19 proving that a) Seth Tunstall, William Grover and Ben Garcia committed
20 flagrant perjury in this litigation; and b) they did so while numerous OCSD
21 employees sat silently aware that the agency is in possession of numerous
22 documents fully impeaching their claims. This section will include a discussion
23 of Tunstall’s testimony in three other cases—two of which were homicides, and
24 a letter he authored about the informant he viewed as possibly the most valuable
25 he had managed at the time of the writing. The transcript of one of those three
26 proceedings is presently under seal. In that hearing, Tunstall appears to have
27 testified about an individual whom he considered among his most outstanding
28

1 jailhouse informants.⁴ The section will also examine the testimony of Ben Garcia
2 during a trial several years before this litigation, in which he discussed the
3 TRED database that he and his partners refused to even mention over the course
4 of days of testimony in this case. Lastly, the section will look at how the
5 document cache, including a PowerPoint and a letter of accomplishments, adds
6 to the compilation of evidence from the SH Log showing Deputy Grover's
7 perjury in response to numerous questions in 2014 and 2015. All of this
8 evidence and related analysis speak to the deceitful and expansive conspiracy to
9 conceal the truths about the informant program throughout the course of this
10 litigation.

- 11 3) Critical documents and records appear to have been intentionally withheld from
12 the document cache, including key materials related to the "investigation" by the
13 OCSD of the termination and replacement of the SH Log.⁵ In declarations filed
14 by Captain William Baker in November and December of 2016, he attempted to
15 foster an image of a department digging to find every relevant document and to
16 uncover every unknown answer. However, the disclosed investigation consists
17 solely of three memorandums, totaling six pages, which are alternatively
18 described as summaries and synopses of interviews with 19 employees. The few
19 sentences devoted to describing what appears to be highly informal questioning
20 are wholly inconsistent with an authentic probe. Equally significant, numerous
21

22 ⁴ The California Attorney General's Office ("AG") filed under seal an opposition to the
23 defendant's motion to recuse the OCDA.

24 ⁵ The OCDA's press release of June 9, 2009, stated, "In the **very near future**, the OCDA
25 will be determining and inquiring why the SH Log and these other materials mentioned in
26 the SH Log, were not previously provided to the OCDA in response to OCDA's prior
27 requests and the court's prior discovery orders." The "very near future" turns out to have
28 meant November 16, 2016. In response to an informal request from Defendant Dekraai,
the California Attorney General recently provided him with the investigation by the
OCDA. The investigation conducted by a single OCDA investigator consists of seven
telephonic interviews conducted between November 16, 2016 and January 3, 2017.

1 interviews and contacts described by Baker in his declaration were either
2 purposefully excluded from the disclosed materials or misrepresented in the
3 declaration.

4 If what has been turned over is reflective of the actual interviews, the OCSD
5 has demonstrated clearly its commitment to leaving key questions uninvestigated
6 and unanswered, including what if anything was used in place of the SH Log by
7 Special Handling deputies at the Intake Release Center (“IRC”) between
8 February 1, 2013 and August 25, 2014, and what was being used by the Special
9 Handling Unit located at the Theo Lacy Facility (“TLF”) between September 24,
10 2008, and August 25, 2014.

- 11 4) It is critically important that the defendant receive and review daily activity logs
12 of module deputies, at a minimum from locations where Dekraai and informant
13 Fernando Perez were housed. One of the most significant revelations of the
14 document cache is the true scope of the jailhouse informant effort. For years,
15 module deputies—and not just Special Handling deputies—have been expected
16 and encouraged to develop informants and obtain evidence from them to support
17 investigations and prosecutions. The daily activity logs (also described as
18 “housing/floor logs”), including those created by module deputies where Scott
19 Dekraai and Fernando Perez have been housed, are likely to contain evidence
20 pertinent to this litigation in several forms. For instance, the logs may
21 reasonably include additional evidence of informant efforts directed at Dekraai.
22 Because the OCSD claims only to have been able to locate Special Handling
23 logs for a period of a mere seven months of Dekraai’s 65 months of
24 incarceration—and those seven months of logs (“Special Handling II”) were
25 clearly intended to exclude the type of descriptive material found in the SH Log
26 of 2008 to 2013—logs created by others who were expected to develop
27 informant evidence represent another source about efforts directed at Dekraai.
28

1 The prospect that relevant evidence will be included in the housing/floor logs is
2 increased based upon information contained in the Redacted Supplemental
3 Request Seeking Disclosure of County Counsel Filings. As discussed in the
4 previous motion, during approximately two of the six years when Scott Dekraai
5 was housed at Lacy, either Alexander Frosio or Jason Fenstermacher—both
6 settled informants— were living in cells within his assigned module. That same
7 brief also brought forth the fact that both informants had a nearly two year gap in
8 entries within their TREDs, begging the question of where information about
9 them was being kept considering the purported non-existence of special handling
10 logs at Lacy during these time periods. Relatedly, the housing/floor activity logs
11 are critical because it is probable they will contain details about the expanse of
12 the jailhouse informant program and the scope of the conspiracy to mislead in
13 this case. Said logs are also likely to contain clues about whether additional
14 Special Handling logs exist. For instance, if the logs have details of informant
15 contact and information collection that are described as being communicated to
16 Special Handling deputies, it raises the question as to where the Special
17 Handling Unit documented those communications and the related informant
18 evidence during (particularly if there are not corresponding TRED entries).

19 In addition, litigation in the capital murder case of *People v. Richard*
20 *Ramirez*, which included the testimony of informant Frosio, corroborates that
21 module deputies, with or without the direction of Special Handling deputies,
22 could reasonably have directed additional informant operations at Dekraai. That
23 litigation also offers yet another example of one of the most important points in
24 analyzing whether the death penalty should be imposed in this case: behind
25 every apparent act of good faith disclosure related to informant evidence, there
26 almost certainly remains other evidence that has been withheld. In *Ramirez*, the
27 OCSD, via Senior Deputy Counsel Liz Pejeau brought TREDs to court for an in
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1 camera hearing responsive to a subpoena for records related to Frosio, whom the
2 defense claimed had been directed by a module deputy to engage in informant
3 operations directed at Ramirez. Pejeau successfully fought disclosure, and the
4 OCSD chose not to reveal key evidence (obtained in this case via the document
5 cache) corroborating that a module deputy could very well have instructed an
6 informant to engage in operations to develop evidence against an inmate,
7 regardless of whether proof of it existed in classification records, such as
8 TREDs. The name of the database being reviewed, "TRED," was never
9 disclosed to the defense nor was the information within his Frosio's TRED that
10 compellingly show the OCSD operated a jailhouse informant program. Instead
11 Pejeau looked on as the Honorable William Froeberg read excerpts from the
12 unidentified classification record (TRED), which a) indicated that Frosio had
13 been told by a Special Handling deputy not to do informant work at a time prior
14 to when the deputy allegedly gave Frosio his mission, and b) described a gap in
15 Frosio's classification records suggesting that he would not have been working
16 as informant during the time period when he claimed to be working as an
17 informant. We now know that this gap means nothing of the sort, and instead
18 actually suggests there is likely another still unidentified repository of
19 information documenting his (and Fenstermacher's) contact with Special
20 Handling deputies.

21 In June of 2014, when this hearing was conducted, Ramirez (Dekraai and
22 others) a) had no idea of TREDs, b) that Frosio's TRED contained compelling
23 evidence of a jailhouse informant program, c) nor that module deputies have
24 played an integral role in the program. However, even with the revealing
25 TREDs right before the eyes of the OCSD and their counsel—at a hearing that
26 was being conducted just 39 days before this Court issued its first ruling in
27 August of 2014—the OCSD elected to take a path of continuing silence. They
28

1 did this despite the full realization that, at that moment, it appeared that Dekraai
2 and many others were likely to never learn about the TREDs, the SH Log, the
3 document cache, and truths within them.⁶

4 5) Conspicuously absent from the document cache are Sergeant's Activity Logs,
5 Daily Briefing Logs, and Administrative Segregation Logs. Defendant realized
6 these logs existed for the first time after obtaining the agency's retention policies
7 in recent months. Unlike the defense, though, the leaders of the OCSD cannot
8 plausibly claim to have recently learned of these valuable investigative sources.
9 With regard to the Sergeant's Activity Logs, for example, it can be asserted with
10 near certainty that all of the present day commanders, captains, and lieutenants
11 were once sergeants. All of those current and former sergeants remembered that
12 they, themselves, maintained logs. In other words, every leader in the agency,
13 including those who have purportedly been searching in earnest for answers,
14 recognized that an examination of the Sergeant's Activity Logs of numerous
15 staff members, as well as the Briefing Logs, would logically have been among
16 the first databases to examine for potential insights and answers about a) why
17 two sergeants (Wert and Ramirez), who gave and then retracted their explanation
18 about why they ordered the termination of the SH Log, actually decided that the
19 log needed to be terminated just days before this Court was set to rule on
20 comprehensive informant discovery; b) which members of the chain of
21 command, including Lieutenant Briggs, were aware of the SH Log and jailhouse
22 informant program and when they became aware; c) why Sergeant Brent Benson
23 directed deputies to start making entries in a Special Handling Log on August
24 25, 2014, and who participated in the decision making process to start (and try to
25

26 ⁶ In hindsight, it hardly comes as a surprise that on the day the OCDA was required to turn
27 over to the defense discovery that included the TREDs for Frosio in the case of *People v.*
28 *Joseph Govey*, the agency elected instead to dismiss the charges. (Orange County Superior
Court No. 12ZF0134, Register of Actions, attached herein as Exhibit C.)

1 stop) its use; or d) who originated and participated in decisions to change policy
2 guidelines in 2015 related to informants, and to seek authorization to destroy
3 informant records. Similarly, because jail informants (such as Oscar Moriel) are
4 often classified as administrative segregation (“ad seg”) inmates, this log is
5 likely a significant source of information about informants and the cover-up of a
6 falsely-denied jailhouse informant program—particularly for the time period
7 when special handling logs are missing or were never created.

8 6) In his Supplemental Motion for Disclosure of Filings by the OCSD, filed
9 February 9, 2017, Defendant details how his examination of OCSD policy
10 manuals and updates to them made in 2014, revealed that the agency attempted
11 to create cover for false testimony about the use of its informants by inventing a
12 new category of inmates who share information with deputies, entitled “source
13 of information.” However, two key writings by a key Special Handling deputy
14 found within the document cache now indicate that, in fact, the plan to change
15 agency policies by re-defining informants was a secondary step—and the effort
16 undertaken was far more devious and misleading than previously understood. It
17 appears that shortly after the Defendant first raised allegations of a custodial/jail
18 informant program, deputies were directed to stop calling informants
19 “informants” and instead relabel them as “sources of information.” Thus the
20 denials in 2014 by deputies such as Garcia that there were informants in the jail
21 other than those operating in furtherance of the gang task force was rooted in
22 nothing more than a name change—a shameful “inside joke” played on a capital
23 defendant, his defense counsel and this Court. Subsequently, the agency
24 furthered this disingenuous effort to make false testimony appear forthright by
25 changing policy manuals to suggest that “informants” and “sources of
26 information” were two different categories of inmates who supply deputies with
27
28

1 information, and with few exceptions, Special Handling deputies had been
2 working with sources of information and not informants.

3 7) While the prospect of and eventual commencement of investigations by outside
4 agencies arguably may have worked to encourage disclosures by some members
5 of the OCSD, there is significant cause for concern that some staff have been or
6 will be influenced to hide and destroy particular evidence—and still others will
7 not permit outside investigation to impact their disreputable practices. There is
8 historical support for these concerns. The initiation of the 2008 Department of
9 Justice (“DOJ”) investigation of the OCSD did not, for example, deter the
10 shredding of documents that appears to have been impermissible under the
11 retention/destruction policies in effect. A troubling entry in the SH Log suggests
12 the possibility that Special Handling deputies may have also manipulated
13 particular logs on the eve of a site visit by the DOJ and its investigators. In
14 addition, former Assistant Sheriff Mike James, who was a point person for the
15 agency in terms of the earlier federal investigation, specifically authorized a plan
16 to violate the Sixth Amendment rights of murder defendant Leonel Vega while
17 the federal investigation was underway;

18 8) A letter from Special Handling Deputy Jonathan Larson to veteran OCDA
19 prosecutor, Senior Deputy District Attorney David Porter, describing informant
20 work by a critical witness in a murder prosecution a) suggests there are likely
21 still more undisclosed repositories of informant documentation; b) offers
22 additional evidence that the OCDA was fully familiar with the operation of the
23 jailhouse informant program well before the litigation in this case began; c)
24 corroborates that the practice of shading known details about informants to allow
25 the most favorable presentation is endemic; and d) demonstrates that this
26 county’s prosecutors and largest law enforcement agency continue to operate
27 without a requisite commitment to disclose favorable evidence, eviscerating any
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1 reasonable faith that favorable mitigation evidence will be disclosed simply
2 because the prosecutorial agency has been replaced. This Court is, of course,
3 familiar with *People v. Stanley Miles Simon, et al.* (Orange County Superior
4 Court Case No. 08NF4115), having presided over four trials, and other litigation
5 in the cases—including most recently discovery proceedings in anticipation of
6 potential habeas corpus litigation. (*People v. Stanley Simon, et al.*, No.
7 08NF4115, Partial Register of Actions for all defendants except Damon Hill,
8 attached herein as Exhibit D.) The above referenced letter describes informant
9 efforts by Simon's accomplice Damon Hill, who testified for the prosecution at
10 all four of the trials leading to five murder convictions. The defendants, though,
11 were apparently unaware that Hill had been long-time jailhouse informant at the
12 time of his testimony. Simon's petition for Habeas Corpus filed on March 21,
13 2017, does not include any reference to the letter even though the petitioner
14 attempts to piece together evidence that indeed Hill was an informant—strongly
15 indicating that this irrefutable evidence of informant status, has not been
16 disclosed. Moreover, it would appear likely that neither this letter, nor other key
17 impeaching evidence related to Hill found in the SH Log and TREDs, were
18 produced to any of the other five defendants between 2012 and 2016. The non-
19 disclosure to defendants Nicholas Valerio and Jarrell Kelly would have been
20 particularly egregious, as **Hill testified in the 2012 trial of Nicholas Valerio**
21 **and Jarrell Kelly just one day prior to the date on the letter.**

22 Additionally, there was nearly a one year delay (after the 2016 revelation of
23 the SH Log) by the OCDA in making disclosures from the SH Log and the
24 TRED database related to Hill and jailhouse informant Jeremiah Rodriguez.
25 Significantly, those disclosures did not the result from the OCDA's careful study
26 of the SH Log for favorable evidence, which the agency publicly promised in
27 June of 2016, but instead was the product of one habeas petitioner pressing for
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1 lawful discovery. All of this governmental conduct further corroborates that the
2 OCDA simply cannot be trusted with turning over mitigation evidence in the
3 context of this litigation, and the replacement with a second prosecutorial agency
4 does not eliminate the reasonable risk of non-disclosure of previously
5 undisclosed evidence.

6 9) Defendant is seeking materials via subpoena, that pertain to the OCDA's
7 apparent decision in 2016 to delay disclosure to this Court of additional logs—
8 apparently from Lacy. E-mails suggest that the prosecution took possession of
9 these additional logs just one week after the very public pronouncement in June
10 of 2016 that the OCDA believed it was required to turn over the SH Log.
11 However, Assistant District Attorney Dan Wagner and his office apparently
12 delayed even studying the logs until the defendant filed an informal discovery
13 request in August of 2016. After then determining that he was required to make
14 disclosures to the defense, Wagner inexplicably decided not to turn the
15 additional over to the Court—apparently waiting until December of 2016. The
16 term “apparently” is being used because the defense is presently unable to
17 determine whether those same documents were even included among the
18 materials provided that month for in camera review.

19 One of the more troubling, but likely explanations for this decision to delay is
20 that the OCDA feared that disclosure would alert defense counsel for capital
21 defendant Daniel Wozniak (who is also co-counsel for Defendant Dekraai) that
22 materials had been located contradicting testimony by two Special Handling
23 sergeants who claimed that Special Handling deputies did not create logs at
24 Lacy.⁷ A decision to withhold evidence from Scott Dekraai in order to help
25

26 ⁷ Hiding logs from Dekraai to keep Wozniak from obtaining any benefit from discovery
27 contents would be consistent with other actions. Despite representations that both the
28

1 ensure that a death sentence for another capital defendant would be imposed on
2 the scheduled date would powerfully demonstrate that the OCDA may not be
3 trusted as an agency to turn over all favorable evidence to this defendant—
4 regardless of the appointment of a different prosecuting agency.

5 10) Sheriff Hutchens has long realized that many of her key comments related both
6 to what occurred in this litigation and to the purported non-existence of a
7 jailhouse informant program were false. The refusal of Hutchens to
8 acknowledge the wrongdoing of her agency and her own misrepresentations
9 adds support both to the requested disclosures and the request to dismiss the
10 death penalty. A review of the document cache suggests that any alternative
11 explanation, such as inadvertent error, is only reasonable if she refused to avail
12 herself of the contents of the document cache, or those subordinates involved in
13 the investigation inexplicably misled her about the contents of the document
14 cache and the SH Log. With Sheriff Hutchens' announcement this month of a
15 new public information officer, Lieutenant Lance Lagaret, Sheriff Hutchens now
16 has at least three high ranking staff who are fully knowledgeable of the long-
17 standing jailhouse informant program and the deception that has poisoned both
18 the litigation and the public commentary about it—the others being the
19 Commander of Jail Operations Jon Briggs and Assistant Sheriff Adam Powell.
20 Briggs was not only a supervising sergeant of the Special Handling Unit, when it
21 was operational, but appears inexplicably to have been one of the leaders of the
22
23

24
25 OCDA and the OCSD had provided all SH Logs to Wozniak that were required as a result
26 of earlier subpoenas, neither agency elected to inform Wozniak prior to the date he was
27 sentenced to death, that there was gap of more than five months in the SH Log, nor that
28 the agency had not completed its search for additional logs at the time he was sentenced.

1 2016 investigation regarding the SH Log. Powell has officially overseen the
2 related investigation since February of 2016.

3 Lagaret, like Briggs, Powell (and certainly hundreds of others) is fully
4 knowledgeable of the false denials that deputies cultivate and manage
5 informants, having served previously as a sergeant responsible for supervising
6 the Special Handling Unit when the SH Log was still being used. In fact, his
7 name appears nearly four dozen times in the SH Log. Although OCSD
8 employees have routinely asked outsiders to suspend disbelief in the face of
9 incontrovertible evidence, it would still seem impossible that Lagaret failed to
10 tell Hutchens that indeed Special Handling has long cultivated and managed
11 informants. But if Lagaret wishes to take a path of less integrity, and claim that
12 he was unaware of what his deputies were doing, he need only be reminded of a
13 single e-mail sent to him by his deputies and posted on the wall of the Special
14 Handling Office. (Documents from Partial Shared Drive, p. 1648, attached
15 herein as Exhibit E.) It will undoubtedly do wonders in refreshing his
16 recollection (and hopefully the Sheriff's, as well) in the importance that the
17 entire agency has long placed on cultivating and managing jailhouse
18 informants:⁸

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23
24 ⁸ Interestingly, the e-mail itself does not appear anywhere in the document cache, raising
25 additional questions about what still remains undisclosed and how disclosure
determinations were made.

26 ⁹ The hours of operation for the Special Handling Unit further undercuts Sergeant Kirsten
27 Monteleone's unusual suggestion during testimony in *People v. Wozniak* that missing
28 months in the SH Log could have been attributable to vacation schedules. She never shares

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12
13 **1. Decades of Widely Encouraged Development and Cultivation of Jailhouse**
14 **Informants**

15 It is now apparent that great numbers of OCSD staff have known that the allegations
16 about the operation of an extremely active jailhouse informant program, first detailed in
17 Defendant's motion filed in January of 2014, were unquestionably true. Many also
18 realized that there existed a SH Log, as well as a vast array of documents from training
19 materials to intra office correspondence were being withheld so as to allow witnesses and
20 department leaders to go on the offensive and claim that it was the defense that was
21 recklessly analyzing facts to comport with its own misguided theories. In contrast to
22 Sheriff Hutchens' claims that deputies have limited their effort to accepting information
23 from those inmates who without prodding come forward, there has been a decades-long,

24
25 during the testimony or afterward that there were five **consecutive** missing months.
26 (*People v. Wozniak*, May 3, 2016, Partial Reporter Transcript, pp. 3692-3693, attached
herein as Exhibit F.)

27 ¹⁰ The memo provides a definition of the term "caper," widely used throughout the SH
28 Log.

1 purposeful enterprise aimed at recruiting and developing inmates that has yielded scores of
2 informants. In fact, in a memo dated February 28, 2008 to Sergeant Brittain, Special
3 Handling deputies reminded the sergeant and the others within the chain of command of
4 the enormous value of Special Handling deputies, as the agency apparently weighed
5 whether deputies should be replaced with correctional officers:

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 That Special Handling deputies had been cultivating and developing large quantities
16 of jail informants for years would certainly not have been a surprise to supervisors and
17 commanders. In fact, the following year the above-referenced memo written to Sergeant
18 Lagaret was apparently placed on the wall in the Special Handling Unit, which emphasized
19 the role of deputies with regard to cultivating and managing informants.

20 In a power point, apparently created by Grover, and discussed in more detail below, the
21 responsibilities of Special Handling deputies were detailed with regard to confidential
22 informants on the second to last page. (Exhibit E, p. 1290.)

23 Those responsibilities also included recruiting inmates who were prospects for
24 protective custody. In fact, the document cache includes a [REDACTED]
25 which includes a script of questions including those probing whether the inmate will work
26 as an informant within the jails. The questions include the following:

1 The debrief, which appears to be the classification interview to determine possible
2 [REDACTED] status, includes per se recruitment of inmates to become confidential
3 informant within the jails. What is equally important is that the subject matter of the
4 informant work referenced is not gathering jail intelligence, but rather providing assistance
5 with investigation of crimes that primarily take place outside of the jails:

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 A wide variety of materials, from training documents to internal correspondence,
13 confirm that the critical allegations first raised by the defendant in January of 2014
14 regarding a jailhouse informant program and still never directly acknowledged by the
15 OCSD, were true. Memo after memo emphasizes the importance of cultivating,
16 encouraging and utilizing informants:

17
18 On July 4, 2003, Special Handling sent a memo to Classification asking that a
19 confidential informant for a gang enforcement deputy named [REDACTED] be moved near a
20 target named XXX so that he can obtain information about a weapon in a gang territory.
21 To facilitate this effort, Classification was directed [REDACTED]
22
23
24
25

26 ¹¹ In several instances Defendant utilizes three consecutive capitalized letters in the place
27 of a previously unidentified informant or targets names. The redaction of these names
28 supports the unsealing of these moving papers.

1 [REDACTED]
2 [REDACTED]
3
4 On May 8, 2004, in a briefing from Classification/Special Handling, the author refers to
5 a reliable confidential informant within the jail, and reminds the deputies to keep working
6 their informants: [REDACTED]
7 [REDACTED]
8 [REDACTED] (emphasis added)
9

10 On February 27, 2005, in a "Classification/Special Handling" briefing, the author
11 references its confidential informants, stating [REDACTED]
12 [REDACTED]
13

14 In an Intra-Department Briefing from Classification/Special Handling, dated February
15 9, 2006, there is reference to a response [REDACTED] (*Id.*, at p. 1024.)
16
17
18
19
20

21 ¹² This memo provides a remarkable reminder that the process of changing classification
22 levels, and the associated wristband color, in order to enhance the chances of an informant
23 successfully eliciting information from a target, has been a consistent tool of the trade, as
24 well as utilizing a change back to previous classification level if the informant does not get
25 down to work. According to a TRED entry written by former Special Handling Deputy
26 Larson in 2011, Alexander Frosio at one point was "given a chance to produce information
27 and if he does not he will be considered for PC housing." Frosio then had his classification
28 level adjusted to help effectuate his success. (Exhibit A120, *People v. Dekraai*.) A few
months later, Larson indicated that Frosio was accomplishing the objective of "producing
good information related to ongoing County EME. Issues...^ will be flexed to Lvl-3 to
further accommodate his information gathering." (*Ibid.*)

1 On July 31, 2006, Deputy Manchester wrote to Sergeant Irish about his confidential
2 informant, who was working with the [REDACTED]. He wrote the following: [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6
7 In a memo to Sergeant Irish dated August 6, 2006, Special Handling details their
8 duties which include [REDACTED]
9 [REDACTED]
10

11 On October 5, 2006, Lieutenant Turrentine wrote to Sergeant Irish regarding
12 [REDACTED]
13 It states that [REDACTED]
14 [REDACTED]
15 [REDACTED]
16

17 An Intra-Department Memo, dated March 28, 2007, to Deputy B. Irish from
18 "Classification/Special Handling" regarding [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22

23 ¹³ This statement incorporates the strained analysis seen time and time again in informant
24 litigation. Deputies and prosecutors contend that informants are performing services for
25 purely altruistic purposes, even as they recognize that the informant or his counsel plan to
26 seek a better resolution or lower sentence by presenting evidence of the informant work
27 completed to the judge who can resolve the case or is required to sentence. For instance,
28 prosecutor Assistant District Attorney Wagner and the OCDA suggested that then-Third
Striker Fernando Perez was being truthful when he claimed that his assistance in this
matter was a selfless act.

1
2 In an Intra-Department Memo from Sergeant Irish to Captain Wilkerson, dated
3 March 29, 2007, he wrote an [REDACTED]

4 [REDACTED] He stated the following:

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 In a briefing dated April 17, 2007, from Special Handling, the author wrote

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14
15 On January 11, 2007, a memo to Sergeant Irish entitled [REDACTED] provides a
16 synopsis of Special Handling's efforts to obtain information regarding a possible attack
17 upon a deputy. The memo states that among the resources and contacts utilized to
18 facilitate the investigation were [REDACTED] [REDACTED]

19 [REDACTED] The facility referred to is Lacy.

20
21 An Intra-Department Briefing from Classification/Special Handling, dated April 10,
22 2008 regarding [REDACTED] emphasized the responsibility of Special Handling

23
24
25 ¹⁴ This memo corroborates the belief of OCSD leadership that the local prosecutors
26 have been well aware that Special Handling deputies cultivate and develop
informants in support of their cases.

27 ¹⁵ The identification of this number of informants in one of the two facilities at a single
28 point in time suggest that likely well over a thousand jail informants—not hundreds—
have worked under the supervision of jail staff over the course of decades.

1 Deputies to identify and develop confidential informants: [REDACTED]
2 [REDACTED]
3 [REDACTED]
4

5 On January 29, 2008, Deputy Manchester wrote to Sergeant Irish and Sergeant
6 Peters regarding an individual whom Manchester said [REDACTED]
7 [REDACTED]
8 [REDACTED]
9

10 A document within the cache also offers insights into the operation of informant/snitch
11 tanks within the jail in which multiple jail informants and inmate targets are placed in a
12 single housing tank.
13

14 On December 16, 2009, a document entitled [REDACTED]
15 included a number of duties which among them was to [REDACTED]
16 [REDACTED]
17

18 In an undated letter entitled [REDACTED] Special Handling deputies
19 instructed module deputies about how informant tanks should operate and that L-20 serves
20 both the OCSD and other agencies. The letter also stresses both that the tank must appear
21 to run like any other tank to ensure maximum effectiveness, and that Special Handling
22 deputies are the handlers of the informants housed there. (Of course, this statement stands
23 in direct contrast to the testimony of Garcia, Grover and Tunstall who denied that they
24 work as handlers in their capacity as Special Handling deputies.) The letter states the
25 following:
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

[REDACTED]

2. Additional Evidence of Deception by Three Key Special Handling Witnesses
a. The OCSD's Unwillingness to Renounce Blatant Perjury: Special Handling
i. Deputy Seth Tunstall

Tunstall's significance to this litigation cannot be understated. Likely because of his lengthy experience in the Special Handling Unit and his advanced degrees, he appears to have been relied upon by the OCDA and fellow Special Handling deputies—a point that clearly emerges from a study of the SH Log and other evidence. Moreover, although he was ultimately added to the Santa Ana Gang Task Force ("SAGTF"), he was assigned to Lacy during his many years in the Special Handling Unit, and clearly he retained his connection to Special Handling and Lacy in particular. As discussed, Dekraai has been housed at Lacy for nearly the entire period of his incarceration, which is in excess of six years. Thus, evidence about the jailhouse informant program's operation at Lacy is critical, particularly in the claimed absence of nearly any logs detailing the effort.

1 In the summer of 2014, the revelation of the TRED database was of unquestionable
2 importance in revealing earlier false testimony, and in corroborating the jailhouse
3 informant program alleged by the Defendant. However, no piece of evidence spoke with
4 greater clarity on the subject than a 2013 search warrant written by Tunstall in the case of
5 *People v. Zorich* (Orange County Superior Court Case Number 13WF0934.) Tunstall had
6 sworn under oath that the duties of those assigned to the Special Handling Unit included
7 “developing” confidential informants, and that he had personally “cultivated, interviewed
8 and supervised numerous informants.” (*Dekraai* Hearings, Exhibit A188.)

9 Returning to the witness stand in early 2015, Tunstall was unaware that the defense
10 had obtained a copy of the warrant. His denial of the meaning of the words he himself had
11 clearly written—words that were inconsistent with not just his own testimony but that of
12 his colleagues—pointed to a conspiracy by members of his agency. But his perjury and the
13 conspiracy crystallizes even further with the numerous writings that bring to life what staff
14 was telling each other as they operated the program on a daily basis. Those writings also
15 bring into sharp focus that words such as “cultivate” and “develop” were not introduced by
16 Tunstall out of thin air, but were the words used by deputies and supervisors to clearly
17 articulate how informants have been drawn into the fold as quasi-governmental
18 investigators.

19 Aware that the defense lacked knowledge of or access to the SH Log and the
20 document cache, Tunstall disavowed what he had written in the *Zorich* search warrant (and
21 other similarly worded search warrants affidavit signed in other cases), and claimed that
22 neither he nor the Unit engaged in the conduct described under oath. (*Dekraai*, February
23 9, 2015, R.T. 6346-6354.) Based upon the contents of the document cache, it is now
24 clearer than ever that Tunstall’s wanton dishonesty was appreciated by members of the
25 Special Handling Unit, and other staff from the OCSD who were following this litigation
26 and had worked in the jails or supervised those who did.

1 But it was not just government officials from the OCSD who were aware that
2 Tunstall's description within the *Zorich* search warrant was not a case of poor word
3 choices. Defendant Dekraai subsequently uncovered his testimony in two cases in which
4 Tunstall similarly described his effort—years before—in matters prosecuted by Assistant
5 District Attorney Ebrahim Baytieh. During the trial of several inmates charged in the
6 custodial death of John Derek Chamberlain, Tunstall was questioned about informants
7 inside the jail:

8 Q. Did you develop informants within the jail facility who were housed at
9 your jail during the period that you were working?

A. Yes.

10 (Partial Reporter's Transcript (Trial), *People v. Guillen*, et al., Super. Ct. Orange
11 County, No. 06CF3677, August 18, 2011, and attached herein as Exhibit G, at p.
12 2065.)

13 Interestingly, Tunstall's answer was given just a few months before Perez and Dekraai
14 were moved into side-by-side cells. Baytieh's questioning that included the word
15 "develop"—identical to that used in Tunstall's search warrant—strongly implies the
16 prosecutor knew the answer and the truth before posing the question.

17 Baytieh's understanding of the fact that Special Handling deputies developed and
18 managed informants was something demonstrated two years earlier during his questioning
19 of Tunstall during the capital murder prosecution of Billy Joe Johnson.

20 Q. Part of your duties, does that entail you having informants that are within the
21 prison population or jail system population that are providing you information?

A. Yes.

22 Q. And do you also share that information with other law enforcement personnel?

A. Yes we do.

23 (Partial Reporter Transcript, *People v. Billy Joe Johnson*, Super. Ct. Orange County, No.
24 07CF2849, October 13, 2009, attached herein as Exhibit H, p. 1814.)

25 As indicated above, in Sergeant Irish's 2007 memo to Captain Wilkerson, he
26 expressed his belief that the OCDA was aware of the [REDACTED]
27 [REDACTED] possessed by the [REDACTED]
28

1 [REDACTED] (Exhibit E, p. 1028.) (emphasis added) That memo was
2 authored just five months before the case against Billy Joe Johnson was filed.
3 Interestingly, in 2007, Tunstall attempted to assist a particularly valued jailhouse informant
4 in avoiding a state prison commitment and allowing his immediate release from custody.¹⁶

5 Within the document cache is a letter, dated [REDACTED], which Tunstall wrote to
6 help convince the assigned court that it not sentence [REDACTED] to state prison.

7 [REDACTED] This letter is particularly significant because it further rebuts
8 the narrative that deputies and agency leaders have tried to espouse at different points in
9 time, which is that informant and/or source of information work has been almost entirely
10 limited to developing jail intelligence. The letter begins with "[REDACTED]"
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 ¹⁶ While again the defendant will redact information related to this informant from
16 the redacted version to be filed, in considering the defendant's request to unseal this
17 version in its entirety, it must be emphasized that the defendant learned of this
18 informant well before the document cache was disclosed. Pursuant to a California
19 Records Act Request of the OCDA, attorney Scott Sanders obtained the name of
20 another murder case and the informant from another state who testified for
21 prosecutor Baytieh. Defense investigation then led to identification of [REDACTED]
22 as an informant in that case, whom [REDACTED] decided not called as a witness at trial.
23 Perhaps most importantly, during [REDACTED] litigation of several cases, he
24 introduced the subject matter of his work as an informant in litigation in open court.
25 For example in questioning on [REDACTED] [REDACTED] counsel questioned [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 Tunstall's language throughout the letter illustrates the point that Special Handling
4 views itself as a partner in criminal investigations, regardless of the location of the crime.
5 For instance, Tunstall wrote that "[REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Tunstall's letter on behalf [REDACTED] — written seven years before
10 his 2014 testimony—stands in complete contrast to Sheriff Hutchens' assertion, "The
11 deputies in the jail, uh, are not conducting investigations." (Hutchens Transcript, PD
12 #07124-32, p. 4, attached here in as Exhibit I.)

13 In [REDACTED], less than three months after Tunstall submitted his letter, he was
14 called as a witness for [REDACTED] during litigation to [REDACTED].
15 [REDACTED]
16 [REDACTED] Defense counsel attempted to elicit
17 information about [REDACTED] conduct to aid the release. Tunstall's identical responses to
18 several questions during the 2007 hearing are noteworthy¹⁷. Tunstall invoked his privilege
19 under Evidence Code Section 1040 in response to five different questions. [REDACTED]
20 [REDACTED]

21 Tunstall's repeated invocations are entirely inconsistent with the portrayal of
22 Tunstall and his fellow deputies that Sheriff Hutchens offered in her interview with ABC
23 News. She argued that Tunstall specifically, and Special Handling deputies generally,
24 were not investigators and thus were unaware of what they could appropriately speak about
25

26 ¹⁷ It is also noteworthy that on the very same day Tunstall testified in another case in which
27 [REDACTED] was the defendant. However, those proceedings were conducted in a closed
28 courtroom and the transcript was sealed. ([REDACTED].)

1 in court and how they should respond if a question called for the disclosure of privileged or
2 confidential information.

3 Q1: Why would Deputy Tunstall basically kind of—not deny the existence of
4 TRED, but not-even mention it when it was clear—it as kind of an
5 obvious way of-of, uh, talking about how somebody was classified when he
6 was testifying?

7 A: Right. I-I believe that he was unclear on what he could or could not say
8 about that system. I don't think he was intentionally, um, trying to do
9 anything or mislead the judge or anybody else there.... I just—I just don't
10 think the deputy knew. They don't—you know, they deal with these kinds of
11 investigations. They're usually assisting, uh, investigators either in our
12 department or in other departments... but, you know, to the, yeah, it's-it's
13 information in the jail world they want to keep secret to protect the security
14 of the facility and protect the inmates... and I really think he was unsure
15 about what he could or couldn't say at that point.

16 (Exhibit I, p. 3.)

17 Testimony in *Guillen, Johnson* and [REDACTED] demonstrates that when Tunstall testified
18 in *Dekraai*, he was not suffering from a lack of experience as a witness, a lack of
19 understanding regarding the jailhouse informant program, or a lack of training about how
20 to protect confidential or privileged information from disclosure in a courtroom. He and
21 his colleagues were suffering from a lack of commitment to telling the truth.

22 It is ironic that deputies have been so willing to deceive to protect a program rooted
23 in individuals who have greater personal success the more skilled they are at deception.
24 Authorities in a nearby state certainly are witness to the fact that the line between
25 impressive informant and talented con man is sometimes razor thin.¹⁸

26 **ii. Special Handling Deputy Ben Garcia**

27 ¹⁸ Indictment, [REDACTED]
28 [REDACTED]

1 As this Court certainly recalls, the resumption of evidentiary proceedings in 2015
2 allowed an opportunity for Deputy Ben Garcia to explain why he never referenced TRED
3 records in the context of constant probing about the reasons for particular inmate
4 movements. Beginning on February 10, 2015, Garcia provided a winding series of
5 explanations in which he asserted that TREDs were highly confidential, but that he would
6 have been able to mention them—while also claiming that no question by defense counsel
7 compelled him to think of mentioning the TREDs. Garcia's 2014 responses regarding the
8 TREDs meandered, almost unrecognizably at times over two days of testimony, one week
9 apart. On February 10, 2015, Garcia stated the following:

10 Excerpt #1:

11 Q. So you could say the term "TREDs," but you couldn't say what was
12 included in the TREDs?

13 A. I don't believe I was ever told we couldn't say "TREDs." I just believe it
14 was -- that was information that we considered very confidential.

15 Q. That belief, where did that come from?

16 A. That I couldn't tell you, sir. That was something I was told when I went
17 into classification.

18 (*Dekraai*, R.T., 6503.)

19 Excerpt #2:

20 Q. So from your perspective you could talk about them, but you couldn't release the
21 contents?

22 A. That is correct, sir.

23 Q. Without doing what? What would be the step that, in your mind, you
24 would have to take before you could disclose the contents?

25 A. The way I understood it, sir, was we first of all would run it by our
26 supervision and they would run it through County Counsel.

27 Q. All right. And did you understand that back at the time period when you
28 were working in classifications?

A. I think I understand the process better so today than I did back then, sir,
but --

Q. When you say "better so today," today as of what date?

A. I am just saying within the last couple years I understand it better.

Q. What happened in the last couple of years that's changed your
understanding about it?

1 A. Just -- I think just working special handling, just having a better
2 understanding. Having to testify.
3 (*Id.*, at pp. 6504, 6505.)

4 Excerpt #3:

5 Q. So prior to October when this issue kind of surfaced, had you ever had a
6 conversation with a member of the district attorney's office, be it attorney or
7 investigator, about a TRED?

8 A. I don't believe so, sir.
9 (*Id.*, at p. 6508.)

10 Excerpt #4:

11 Q. Okay. Okay. When you were speaking with the District attorney's office,
12 one of the things you said -- a question was asked of you, "Were you
13 instructed by superiors to keep the TRED confidential, or was that a decision
14 you came up with on your own?" You said, "No, superiors. It was
15 something if you are ever in court and everything else, you invoke that.
16 You don't bring that up, you don't talk about what's on the TRED.
17 Something you don't discuss. That's confidentiality. There is what we
18 were told." Do you remember saying that?

19 A. Yes, sir.

20 Q. Okay. And you said -- so I want to go to that point. You don't bring that
21 up. You don't talk about that's on the TRED. So your belief was, in court you
22 do not talk about what's on the TRED?

23 A. If the question came up, sir, then, yeah, that's what we would say. I would
24 always -- my understanding was I would invoke at that point.

25 Q. Right. Okay. You understood the notion of invoking. You understood that
26 if something was asked of you that was confidential, the ability to invoke
27 under 1040, right? You knew about that?

28 A. Yes, sir.

Q. From your perspective as we went through the hearing, that issue never
gave rise -- it never came up, right?

A. No. No sir.

(*Id.*, at p. 6532-6533.) (emphasis added)

On February 27, 2015, Garcia turned 180 degrees on the subject of why he did bring
up TREDs in response to certain questions:

Q. This is from the hearings where I am in a different subject matter. I am
asking you about the movement of Abel Perez. Fernando Perez says, "Bring
him over." It looks like they are moved. I ask you the question, "Was it a

1 coincidence? What's the reason?" And you said, "It could have been." What I
2 am asking you is, when you were hearing those questions, you knew there
3 was a place to look that could give that answer, right?

4 A. Yeah, I believe so. Yes, sir.

5 Q. But you decided that you didn't want to talk about the TREDs in court?

6 A. That's the way we were trained, yes, sir.

7 Q. So when that question -- That's all I am trying to get to. When that
8 question was asked, you were trained not to answer "the TREDs" in court, so
9 at that moment you decided not to mention it, right?

10 A. I don't know what I was thinking at the time sir. But, yeah, that could have
11 been it because that's the way we were trained, sir. (*Dekraai*, February 17,
12 2014, R.T. 6632)

13 Of course, the fact that Garcia was simultaneously concealing the SH Log and the many
14 damaging intra-agency documents describing the jailhouse informant effort, substantiates
15 that the above responses were merely a matter stacking a new set of lies upon earlier ones.
16 A recent discovery by the defense further supports this conclusion. The previously
17 referenced public records request by Sanders led to the identification of another case in
18 which Garcia testified. The case of *People v. Martel Gonzalez*¹⁹ shares similar features
19 with others discussed in this courtroom (R.T. (trial), November 4, 2009 *People v. Martel*
20 *Gonzalez*, Super. Ct. Orange County, 2007, No. 07CF3663, attached herein as Exhibit N, p.
21 14-16.) In fact, the trial started just one month prior to the much-discussed *People v.*
22 *Leonel Vega*. Like *Vega*, *Gonzalez* was a murder case also investigated by former Santa
23 Ana Police Department ("SAPD") Detective David Rondou,²⁰ in which a jailhouse

24 ¹⁹The trial of Gonzalez ended in a deadlocked jury. The prosecution ultimately elected to
25 dismiss the case rather than proceed to re-trial. (Partial Register of Actions, *People v.*
26 *Martel Gonzalez*, Orange County Superior Court Number 07CF3663, attached herein as
27 Exhibit O.)

28 ²⁰ As the Court recalls, Rondou testified that he never created an informant debriefing log
for his agency. After defense counsel showed him a log, he stated "It has the Santa Ana
insignia at the top. I've never done one of those that I recall in my whole career so I don't
know what it -- I don't work C.I.'s. I don't work informants. That's not anything I'm good
at. I do interviews and investigate murders." (*Dekraai* hearings, May 13, 2014, R.T., p.
3938.) Rondou was unquestionably lying in his claim that he did not work informants. No
local investigator has had more cases intertwined with the jailhouse informant scandal.

1 informant emerged as a key witness. However, what differentiates this case from others
2 previously discussed is the testimony of Special Handling Deputy Benjamin Garcia, and
3 the subject matter that he unhesitatingly tackled.

4 The combined 2014 testimony of Garcia, Grover and Tunstall lasted more than four
5 court days, with the term "TRED" having never been spoken despite hundreds of questions
6 aimed at answering the question TREDs answer best: the reason that a particular inmate
7 was moved. However, in *Gonzalez*, litigated **more than four years earlier**, it appears that
8 Garcia was completely at ease speaking openly about the TREDs from the moment he took
9 the stand. With a prosecutor, Senior Deputy District Attorney asking the questions, Garcia
10 displayed no hesitance talking about the database:

11
12 A. Yes. They actually can't make the move unless they go through us.

13 Q. Once an inmate is placed in a particular housing location, is that
14 documented somehow.

15 A. Yes. Every time we move an inmate, we have to document where we
16 move that inmate.

17 Q. And where is that documentation contained?

18 A. It's what we call it the TREAD entry. It's on the back of the card. So any
19 type of information we put on for an inmate is documented on that TREAD.

20 Q. And at any time is that put into a computer database?

21 A. That's exactly what it is. (Exhibit N, pp. 14-15.)

22
23 Unfortunately for defendants and their interest in justice, Rondou may have been telling the
24 truth that he never documented the work informants did nor his relationship with them.
25 Additional, previously undisclosed efforts corroborating that Rondou sought to bring target
26 and informant together are found within the SH Log. On December 8, 2011, Deputies
27 Bieker/Larson wrote: "Conducted an interview with XXX and SAPD Rondo [sic.] XXX is
28 going to be given another chance to produce information for SAPD. I am going to text
Farshid and let him know and so is Rondo. We shall see whats up." (SH Log, p. 829.) On
December 16, 2011, Deputy Zachary Bieker wrote, "Received a phone call from Corporal
Rondo reference XXX requesting us to put him in a cell next to 'P' I told him that he was
no longer here and he asked if we had anyone else that we could put him next to. I told him
that we could either put him next to G, but then I remembered about R and we are going to
put him in J-5 now." (SH Log, p. 838.)

1 Garcia testified as if there had never been any actual training that prohibited him from
2 mentioning TREDs in court. And, of course, this is demonstrative of a simple truth.
3 Deputies could always speak of TREDs if they were helpful to the prosecutor and if the
4 prosecutor and law enforcement did not have an overriding concern that required the
5 records to be kept secret. Of course, between 2009 and 2011, the landscape had changed
6 dramatically—and even more so by early 2014. Witnesses knew that the TREDs related to
7 the *Dekraai* litigation contained information that would contradict deputies’ false claims
8 that there was no jailhouse informant program, and that the medical unit alone signed off
9 on the movements of Dekraai and Perez. In addition, deputies found themselves for the
10 first time in the midst of litigation aimed at understanding whether the reasons for
11 movements violated the Sixth Amendment and were being hidden from defendants because
12 this was occurring. In fact, Garcia admitted in 2015 that he actually reviewed the TREDs
13 before first testifying, in order to refresh his recollection about movements. Yet with
14 TREDs fresh in his mind on the key dispute in the case, he and his colleagues chose to
15 pretend that they had no idea where to look for more insights about the reasons for
16 movements.

17 In sum, Garcia’s complete ease with which he introduced TREDs into his testimony
18 in 2009 and then hid them interminably in this matter shows again that what gets revealed
19 from the jails often comes down to a simple determination: Is the information perceived to
20 be damaging to the prosecution or inconsistent with a preferred narrative?

21 **iii. Deputy William Grover**

22 Perhaps no deputy’s involvement with informants comes into sharper focus via the SH
23 Log than Deputy William Grover. Grover wrote frequently about his interactions with
24 informants, including with Perez whom he encouraged to work with Daniel Wozniak to
25 “marinate” information about the Costa Mesa murder with which he was charged, and with
26 whom he secretly met just two days before the informant claimed to have heard a
27 confession from Dekraai. (Special Handling Log, p. 783.)
28

1 Yet in his 2014 testimony, Grover feigned only a passing recollection of whether
2 Perez was even an informant:

3 Q. All right. Do you know whether he was an informant in the jail?

4 A. As I stated earlier, I heard at some point he was.
(*Dekraai*, May 21, 2014, pp. 4637-4638.)

5
6 Not stopping there, Grover denied knowing anything about the contact between Perez and
7 Wozniak. He had apparently forgotten about telling Perez to “marinate”—and forgotten
8 that the SH Log was always available to refresh his recollection on the subject:

9
10 Q. Do you know anything about his contact between -- any contact --
anything about his contact with Daniel Wozniak?

11 A. No.

12 Q. Do you know whether he ever had contact with him?

13 A. I don't know that specifically, no.

14 Q. Did you ever give him any assignments, ask him to do things, “Hey, this is
what I want you to do. I want you to get particular information”?

15 A. No.

(*Id.* at p. 4637.)

16 In May of 2010, Detective Rondou directed informant Oscar Moriel to get a confession
17 from murder suspect Isaac Palacios. However, informant and target became involved in a
18 physical altercation. Grover worried that Moriel would come back empty-handed—so he
19 made sure that more opportunities for contact would present themselves. He wrote:

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Housing records reveal that it was actually Grover who had moved Moriel next to
25 Palacios five days before this entry (with a recording device also installed.) But Grover
26 told this Court he had no recollection of why he made the movement. (*Dekraai*, May 21,
27 2014, p. 4631.) Again, if only he had summoned his memory of the SH Log, where he
28 made entries on a daily basis over nearly five years. Grover was asked whether he actually

1 did not “remember ever in the course of [his] career making a movement at the request of
2 law enforcement?” He said, “I do not.” (*Id.* at p. 4632.)

3 It is even more difficult to find spots of truth in his 2014 testimony among the wide
4 swaths of dishonesty.

5 Assistant District Attorney Howard Gundy questioned Grover:

6 Q. And would you say that actually a very, very, very small amount of your
time is spent dealing with informants?

7 A. Correct.

8 Q. Less than minimal?

9 A. I'd say less than zero. I don't -- that's not my focus. That's not my scope. I
generally am consumed with administrative duties.

10 (*Dekraai*, R.T., p. 4640.)

11 Of course, Grover was lying. Grover was heavily involved with informants. He
12 had not forgotten about the SH Log or TREDs when he testified. And he certainly
13 remembered his development and cultivation of informants when it came to demonstrating
14 the excellence of his work to his superiors. In 2012, Grover sent a [REDACTED] to
15 Sergeant Cope, in order to bolster his supervisor's evaluation of him. In 2015, the defense
16 received a redacted performance evaluation that Cope then created—obtained by the
17 Defendant in 2015—in which Grover proudly wrote of this effort with informants.

18 (*Dekraai*, Exhibit A 130, Partial Shared Drive 3d, pp. 1, 3-4, attached herein as Exhibit P.)

19 In fact, the first major accomplishment he wished to discuss involved a jailhouse
20 informant. Grover wrote, [REDACTED]

21 [REDACTED] related to an Orange County location where narcotics were located. He
22 continued to assist the investigation, which apparently led to charges being added and
23 numerous convictions. (*Id.*, at p. 1.) Grover also discussed his work in *Dekraai*, as well in
24 the case of *People v. Nuzzio Begaren*. As discussed in the Motion for Reconsideration
25 filed on November 7, 2014, at page 29, this case involved an operation with imported Los
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1 Angeles informant Raymond Cuevas. (*Id.*, at p. 3.)²¹ It is noteworthy that Grover, and
2 apparently Garcia, appropriately viewed themselves as fully vested team members in the
3 investigation:

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 Included within the document cache is also a report that Grover wrote to be forwarded
11 to the Huntington Beach Police Department, regarding information from a [REDACTED]

12 [REDACTED] The informant stated [REDACTED]
13 [REDACTED] Grover told him [REDACTED]
14 [REDACTED] Grover collected the note and then described it in his
15 report, stating that [REDACTED]
16 [REDACTED]

17 This report, interestingly, was written
18 just one day after Wert and Ramirez directed Grover and Garcia to stop using the SH Log.
19 It is also noteworthy that Grover wrote that both informant and inmate were [REDACTED]
20 [REDACTED] Grover adds that it was [REDACTED] which Deputy
21 Jonathan Larson acknowledged in 2015 was a module where Special Handling placed
22 concentrated numbers of informants and high value inmates. (*Dekraai*, February 17, 2015,
23 p. 6748.)
24

25 ²¹ Although the caper/operation and its name are included in Grover's [REDACTED], the
26 defense did not receive any entries from the SH Log referencing the operation.
27 Additionally, the actual "Operation Plan" is also not included in the document cache, even
28 though other operation plans were included, and can be found beginning at such at page 80
of Exhibit P, Shared Drive 3d.)

1 Grover certainly did not forget the above interaction (or the many others he
2 documented in the SH Log) when he first took the stand in *Dekraai*. Nor did he forget his
3 prominent role in apparently guiding less experienced Special Handling deputies are that
4 they are required to take responsibility for [REDACTED]
5 [REDACTED] This is included in an undated PowerPoint, which on its final page
6 directs contact to Grover. (*Id.* at p. 1291.) Under the page entitled [REDACTED]
7 [REDACTED] there is a single sentence stating that [REDACTED]
8 [REDACTED] It is unclear whether this line was intended to
9 signify a shift at some point to the Special Handling Unit assuming exclusive day-to-day
10 management of informants, or was just a reminder that the Unit has overall management of
11 the informant program.

12 The PowerPoint also emphasizes that [REDACTED] include

13 [REDACTED] It adds with regard to "[REDACTED]"
14 [REDACTED]

15 Under a slide labeled [REDACTED] there is the following language:
16 [REDACTED]
17 [REDACTED]

18 Certainly, the PowerPoint and Grover's apparent leadership in creating it and guiding the
19 jailhouse informant effort at the IRC are irreconcilably inconsistent with his testimony in
20 this case.

21 Additionally, under the heading [REDACTED] there is a curious statement about
22 one of the Special Handling Unit's responsibilities, particularly when one considers that
23 Dekraai was moved into what was purportedly a medical observation cell—even though it
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1 was used by informant Perez in the weeks before Dekraai took his place in that cell:
2 [REDACTED]

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4
5 **3. The OCSD's Refusal to Truly Investigate Critical Issues and Share the**
6 **Investigation**

7 Commander William Baker's November and December 2016 declarations were
8 intended to imply an authentic investigation had been undertaken to get to the bottom of
9 why the SH Log was terminated, what replaced it, and whether a comparable log was used
10 by Special Handling deputies at Lacy. If what has been disclosed in the document cache is
11 a reflection of the work product and the commitment to the truth—as indicated by both by
12 the questioning and the responses of Special Handling deputies and supervisors—the
13 agency simply adds more reason to believe it will never turn the page on truth-telling.

14 Lieutenant Andy Stephens interviewed four lieutenants who previously served as
15 sergeants in Classification/Special Handling during the time period that the SH Log was
16 operational. Stephens wrote a memo to Commander Jon Briggs. Astonishingly, the
17 agency apparently chose to pretend that Briggs could be the point person on an
18 investigation regarding the SH Log, and never interviewed him on the subject matter—
19 even though both he was among the lieutenants who oversaw Classification/Special
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21
22 ²² The fact that medical observation cells were to be used as housing locations is just one
23 piece of information that raises serious questions about the claim that Dekraai's move was
24 purely medical in nature. On July 8, 2012, Grover wrote that [REDACTED]
25 [REDACTED]

26 This statement is hardly consistent with the narrative
27 presented during the litigation that Special Handling deputies had no say in movements
28 carried out in what deputies described as medical housing areas.

1 Handling during a period of time when the SH Log was being used, and the agency
2 publicly claimed in 2016 that no member of the Command Staff was previously aware of
3 the SH Log. The decision to allow Briggs to essentially oversee the investigation is made
4 more astounding in light of the recent discovery confirming that Briggs was a supervising
5 lieutenant in 2011, as well as, the Defendant having filed an informal discovery request of
6 August 4, 2014 that specifically alleged Briggs would have known of the log's existence.
7 (OCSD Investigative Documents, p. Inmate F035241, attached herein as Exhibit Q.) (If the
8 agency believed that a lieutenant questioning a commander on the subject placed the
9 lieutenant in an unfair position, Commander Adam Powell or even Sheriff Hutchens could
10 have inquired—and that is perhaps what occurred, with Briggs offering the dubious
11 response that he was unaware of the SH Log.)

12 Stephens wrote a [REDACTED] of the statements made by the four lieutenants, the longest
13 being three sentences. In none of the summaries did he identify the date of the interview,
14 whether he recorded the interview, or whether he took notes.

15 According to Stephens, Lieutenant Dave Johnson [REDACTED]
16 [REDACTED]
17 [REDACTED] He said it was designed to
18 [REDACTED]
19 [REDACTED] The
20 summaries of the interview with Lieutenants Ostash and Ramirez demonstrate a questioner
21 with little interest in getting meaningful answers if the summary reflects what actually
22 occurred during the interviews. Ostash, who served as a sergeant for six months in 2010
23 simply disavowed any knowledge of the log. Stephens does not indicate whether he
24 showed Ostash a log that includes multiple entries with his name, or whether the probe
25 ended with a stated lack of recollection.

26 The questioning of Lieutenant Marty Ramirez was even more troubling. Ramirez
27 allegedly stated that [REDACTED]
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[REDACTED] Deputy Few pointed out that [REDACTED]

Certainly Few realized then that it was Ramirez (and Wert) who communicated the decision to terminate and replace the SH Log. Yet there is no indication that Stephens confronted Wert with his role in that decision.

Lieutenant Michael McHenry also wrote an [REDACTED] to Commander Briggs dated July 7, 2016. In this memo McHenry suggests that it was not until July 7, 2016, that the [REDACTED]

According to McHenry, he contacted Wert and read the entry on January 23, 2013 beginning with [REDACTED] McHenry summarized Wert's response as follows:

[REDACTED]

1 McHenry stated that he then read the same SH Log entry to Ramirez in a separate
2 call. Ramirez responded that [REDACTED]
3 [REDACTED]

4 The memo suggests that after talking with Powell (who had been promoted to
5 Assistant Sheriff), he spoke again with Ramirez on August 25, 2016. This time Ramirez
6 provided what was purportedly a newfound recollection of not only the log's existence but
7 also his reasons why he believed at the time it should be ended. According to McHenry,
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 McHenry did not indicate in the memo whether he questioned Ramirez a) why it
15 took three rounds of questions to arrive at his supposedly enhanced memory, b) whom he
16 consulted with to make this decision to eliminate the SH Log, c) whether the Command
17 Staff provided authorization for the log's termination, or d) whether any member of the
18 agency brought up the pending 2013 discovery order from this litigation. There is also no
19 explanation why McHenry waited more than two months to document these interviews in a
20 memo, whether he recorded the contacts, nor whether he wrote actual reports documenting
21 his interviews.

22 Significantly, several representations by Commander Baker about the investigative
23 process are not supported by documents included within the document cache. For
24 example, in his declaration dated December 16, 2016, Baker wrote, [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED] Similarly, Baker
2 swore that Ramirez also 'recently informed the OCSD that this summary of his interview
3 was inaccurate,' but had provided no correction. (*Ibid.*) Neither of these purported efforts
4 to disavow earlier statements are described in any writing found within the document
5 cache.

6 Baker also wrote the following about interviews with "seven deputies who were in
7 Special Handling after the termination of the Log in 2013:

8
9 None of the deputies interviewed reported knowledge of any document
10 entitled, "Important Information," "Important Information Sharing" or
11 "Important Information Sharing Only." The deputies interviewed reported
12 that information was generally recorded in memoranda, departmental reports,
13 or TRED entries; day-to-day communications were usually in the form of
14 verbal briefings and information would be shared via crime reports,
15 information reports, emails, internal memos or briefing items.
16 (*Id.*, at p. 4.)

17 This summary is either based in part upon interviews that were not provided in the
18 document cache or was written to be intentionally misleading to a startling degree.

19 Sergeant Mark Few wrote a memo to Commander Briggs, which he dated October 11,
20 2016. It includes very brief summaries with what appear to be only two deputies [REDACTED]

21 [REDACTED] Neither of those two deputies, Zachary Bieker and Deputy Logan Walker, were
22 asked most of the questions described by Baker, unless they are found in other undisclosed
23 reports.

24 The questions, at least as summarized by Few, demonstrate little probing and were
25 largely superficial. For instance, he attributed nearly identical statements to Bieker and
26 Walker about the ending of the replacement of the log. Few wrote that Bieker [REDACTED]

27 [REDACTED]
28 [REDACTED] Few wrote that Walker [REDACTED]

1 [REDACTED] In contrast to the version of questioning that Baker attributed, there is no indication
2 that they were asked about different variations of the "Important Information" log. Nor
3 were they apparently asked about what replacement for the SH Log was provided to keep
4 fellow deputies abreast of events and critical issues as shifts changes. Again, if Baker
5 wrote truthfully, at least five and likely seven interviews are missing from the document
6 cache. Indeed, according to the roster of current and former Special Handling deputies and
7 supervisors produced at the Defendant's request, there were **thirteen** special handling
8 deputies located at IRC in 2013. Two, Garcia and Grover, were unwilling to answer
9 questions. But other than the interviews conducted with Bieker and Garcia, there are no
10 other interviews that are described or identified as having taken place.

11 Additionally, Baker stated that he was "informed and believe that additional follow-
12 up interviews with Special Handling deputies and/or supervisors have been attempted, but
13 many have declined to be interviewed based upon the advice of counsel." (Exhibit R, p. 4.)
14 However, there are no writings within the document cache that reflect any attempted
15 follow-up interviews in which a deputy or supervisor indicated he was refusing to be
16 interviewed.

17 Amazingly, the document cache does not reveal any effort to conduct interviews
18 with Special Handling deputies located at Lacy to determine when logs were used and what
19 would have accomplished the objective of keeping changing shifts informed—if logs were
20 not used.

21 Finally, the OCSD apparently chose not to ask a single deputy or supervisor about
22 a) the jailhouse informant program, b) the practice of cultivating, developing and managing
23 jail informants, or c) any related topic. Of course, taking this path confirms the obvious—
24 the answers were well understood and better not memorialized in writing or recording.

1 **4) The Importance of Daily Activity Logs for Module Deputies, also known as**
2 **“Housing/Floor Logs”**

3 The document cache allows long delayed insights about a jailhouse informant program
4 that was openly operated within the jail. Unquestionably, one of the most significant
5 discoveries is the enormous role that jail module deputies have played with jailhouse
6 informants. Even as the defense pushed past the lie that a jailhouse informant program
7 never even existed, there was relatively little to suggest that module deputies acted as more
8 than mere conduits of information between informants and Special Handling deputies. At
9 most, there were facts to suggest that any module deputy developing and managing
10 informants was an outlier. As indicated in the introduction, this discovery that module
11 deputies were expected to have an active role with informants is of great significance in
12 this litigation for reasons that include the following: 1) The agency now claims that during
13 approximately 90 percent of Dekraai’s incarceration, no Special Handling logs existed for
14 his housing locations, leaving logs created by module deputies as the next most likely
15 source about informant efforts; 2) at least two known informants, Alexander Frosio and
16 Jason Fenstermacher, were housed in the same module with Dekraai at Lacy; 3) both of
17 those informants have unexplained gaps of approximately two years within their TREDs,
18 suggesting that there is likely another location where records of contacts with law
19 enforcement are kept, which could include housing logs; 4) Frosio testified that a module
20 deputy encouraged him to obtain damaging evidence against another capital defendant,
21 Richard Ramirez—corroborating that module deputies may have directed informant efforts
22 at Dekraai; and 5) communications in module deputies’ logs regarding contacts with
23 Special Handling deputies that would logically have been documented by Special Handling
24 deputies, as well, and would be suggestive of additional undisclosed records created or
25 maintained by Special Handling deputies.

26 Frosio testified in *Ramirez* that Deputy William Dow told him to “keep my ears”
27 open with regard to Richard Ramirez (*People v. Richard Ramirez*, Orange County Case
28

1 Number 053262, R.T. 1893-1894, June 27, 2014, attached herein as Exhibit S.) Frosio also
2 testified that he took notes that he turned over to Dow. (*Id.*, at p. 1884) Frosio added that
3 he gave Dow "other stuff that does not pertain to Ramirez." (*Id.*, at p. 1885.)

4 The following questioning occurred:

5 Q By Mr. Bank: You say you were supposed to. Is that because someone
instructed you to do so?

6 A No. Because that's what I was doing at the time.

7 Q When you're saying "doing at the time," do you mean gathering
information about people in the jail at the request of sheriff deputy
8 personnel?

9 A Yes.

(*Id.*, at p.1886.)

10 But, with the great assistance of the OCSD, the government had tremendous push back
11 on Frosio's claim in the form of an entry indicating that even if Frosio had shared
12 information previously, he was told in 2013 by the Special Handling Unit that his services
13 were not required. Unbeknownst to the defense, during the in camera review of
14 subpoenaed records held on June 27, 2014, the Honorable William Froeberg and Pejeau
15 reviewed TRED records. After having completed the in camera examination, Judge
16 Froeberg elected to read the following from what he described simply as being
17 classification records (but which were more specifically Frosio's TREDs):

18
19 The Court: All right. Getting back to the Richard Ramirez matter. The court
20 has reviewed the documentation submitted by the Orange County Sheriff.
21 The information contains the classification information for Mr. Frosio. There
22 is no further documentation. Nothing else was produced. The representation
23 of Ms. Pejeau is that that is all that there is. In going through the
classification records, there was a request that the court determine that there
24 is privileged information that does not warrant disclosure and I am in
agreement with that with one exception. That, according to the classification
25 records on June 11th, 2012, Deputy Tunstall, who I'm informed was the
classification officer at the time, indicated that Mr. Frosio is not to be in Mod
26 P and that he was told to do his time and his services as a C.I. are not needed.
The next information contained on the classification is from April 27th of
27 2014, which was a tank realignment. And the next was June 18th, 2014. So
28

1 there was no information on Mr. Frosio from June 11th, 2012 through March
2 27th of 2014, and then none again until June 18th.

3 Ms. Pejeau: Your honor, if I could make one brief clarification. I believe
4 Deputy Tunstall was the special handling deputy as opposed to the
5 classification sergeant.

6 The Court: Thank you.

7 (*Id.* at pp. 1876-1877)

8 The clarifications that needed to be made by Ms. Pejeau—in *Ramirez*, in the instant
9 matter, as well as many other cases—were ones far more important than Tunstall’s actual
10 rank and position. Instead, she should have shared the fact that the records not being
11 turned over were actually TREDs, and that Frosio’s TREDs in particular were replete with
12 evidence proving a jailhouse informant program, which deputies had been denying in
13 testimony in a courtroom exactly one floor above her. As Pejeau met with Judge
14 Froeberg, the *Dekraai* hearings were quickly coming to a close without the Defendant or
15 this Court having any sense of TREDs, the SH Log, or the document cache—nor the
16 enormity of what they showed. But Pejeau and the OCSD knew the truth, at a minimum,
17 about the TREDs, and how their concealment was perpetuating a fraud.

18 The jailhouse informant program was plain to see in the TREDs presented in
19 Ramirez’s case. Special Handling Deputy Jonathan Larson provided a clearly described
20 picture of that effort, which was nonetheless denied in the months of testimony in *Dekraai*.
21 Larson wrote that Frosio, “will be given a chance to produce information and if he does not
22 he will be considered for PC housing.” (*Dekraai* hearing, Exhibit A120.) Thus, Frosio’s
23 job as an informant was to collect information or risk being reclassified to the widely
24 reviled status of protective custody. According to Larson, Frosio came through and
25 “produced good information related to ongoing EME issues.” His work was being done in
26 apparently an informant tank in Mod J—just as Perez had done the previous year with
27 Daniel Wozniak. (*Dekraai*, February 17, 2015, R.T., p. 6748.) Additionally, Larson’s
28 writings verified that the program managed a large volume of confidential informants in
the jail, stating that “numerous CI’s” described Frosio as being in bad standing at one
point. (Exhibit A120.) (emphasis added)

1 Additionally, for Ramirez, Judge Froeberg's statement that there were no
2 classification records for Frosio during an extended time period would have also seemed to
3 powerfully corroborate that any work Frosio had done previously had come to a crashing
4 halt at a time prior to when he was supposedly being given direction by the module deputy.
5 But, again, Ramirez knew nothing of special handling logs, or that the huge gap in entries
6 in Frosio's TREDs actually suggested possible documentation in another undisclosed
7 repository. Ramirez certainly would have had no idea that there was abundant evidence in
8 materials generated for years that demonstrated the OCSD and the Special Handling Unit
9 encouraged module deputies to work informants (very likely even when Special Handling
10 deputies decided they had no use for that informant.) This body of evidence is highly
11 relevant not just to inmates like Ramirez—but, of course, to Dekraai, who was housed with
12 informants such as Frosio, Fenstermacher, and likely numerous others. The evidence from
13 within the cache includes the following:

14 One of the most compelling pieces of evidence demonstrating the complete
15 integration of the module deputies into the jailhouse informant program is a commendation
16 letter from the Special Handling Unit to Module P deputies praising their work in
17 cultivating informants within the jail, and noting that their efforts have been of great
18 assistance to the OCDA:

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6
7 Additionally, a memo from Special Handling to Sergeant Irish, dated September 24,
8 2007, and copied to Captain Wilkerson, Lieutenant Turrentine, IRC Special Handling,
9 James Musik Facility, Transportation, Central Men's Jail, includes the following:

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14
15 On April 1, 2008, a memo was sent from Theo Lacy Special Handling to Sergeants
16 Irish and Peters explaining the [REDACTED] of Deputies Stedman and Higgins, who
17 both [REDACTED]
18 [REDACTED]
19 Specifically, it was noted that they have [REDACTED]
20 [REDACTED]

21
22 On April 12, 2008, Bowers wrote an e-mail to Special Handling and Classification
23 deputies including Garcia, Grover, Tunstall, Pereyra, and Carrillo. That e-mail further
24 demonstrates that both module deputies and Special Handling deputies have been expected
25 to cultivate and develop informants. It references three memos from deputies in which
26 they discuss their communications with confidential informants. One deputy began his
27 memo, stating that [REDACTED]
28 [REDACTED]

1
2 On April 24, 2008, in a memo from Special Handling to Lieutenant Turrentine,
3 Sergeant Irish and Sergeant Peters, there is a discussion of two individuals who wanted to
4 provide information about t [REDACTED] judge in exchange for
5 consideration. (*Id.*, at p. 1560.)
6

7 On February 13, 2009, Grover received information from Special Handling Deputies at
8 Lacy from a [REDACTED] (*Id.*, at p. 1306.)
9

10 On June 1, 2009, Sergeant Chewiwie wrote a memo regarding information that one of
11 GET Deputy Karr's confidential informants received from another visitor while visiting
12 Lacy. (*Id.*, at p. 1030.)
13

14 On June 27, 2009, Special Handling Sergeant Chewiwie sent a briefing memo, stating
15 that, [REDACTED]
16 [REDACTED] (*Id.*, at p. 1026.)
17

18 On October 23, 2009, Sergeant Johnson wrote a memo to Lieutenant Giudice providing
19 a bulleted list of duties, one of which requires deputies to [REDACTED]
20 [REDACTED] Although informants were not listed
21 under this category, an undated power point included [REDACTED] in this
22 category. Johnson's memo goes on to include [REDACTED]
23 [REDACTED]

24 **5) Additional Previously Undisclosed Logs Likely Contain Key Evidence**

25 In the Defendant's request to dismiss the death penalty, he will argue that the
26 untrustworthiness of disclosures has made its imposition an inevitable violation of the
27 Eighth and Fourteenth Amendment's prohibition on cruel punishment. In essence, there
28

1 can be no reasonable faith that the defendant will ever receive all favorable evidence to
2 which he is entitled. The examples have been non-stop for years, and yet another is the
3 defendant's luck-based journey toward discovering that there are still other highly relevant
4 logs undisclosed by the OCSD.

5 Skipping the steps that somehow brought us to realization of the SH Log, the
6 defense spotted entries pertaining to the destruction of SH files. This led to a request for
7 retention and destruction policies, which would result not only in realizing OCSD planned
8 to re-name and destroy informant-related records, but to finding three other previously
9 unidentified logs that are likely to contain entries of importance. As indicated in the
10 introduction, the OCSD certainly cannot similarly claim ignorance.

11 Sergeants and former sergeants were stuck. They knew that the Sergeant's Activity
12 Logs and the Briefing Logs would have been the first place to look for answers about a
13 panoply of questions regarding the log and the informant program, such as the following.
14 Why did Sergeant Ramirez and Wert truly decide to issue the decision to terminate the
15 logs? Where is the "Important Informant Log" or its equivalent? Who participated in
16 these decisions? But high ranking staff had their limits in pretending they were actually
17 trying to solve a series of perplexing mysteries about the jailhouse informant program and
18 the special handling logs. Thus, the document cache suggests that nobody, including those
19 investigating, turned to the Sergeant's Activity Logs. However, the defense located a
20 reference to the contents of a Sergeant's Activity Log entry within the document cache,
21 and the level of detail is significant.

22 Sergeant Sandoval wrote the following:
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The extensive detail may not be representative of all Sergeant's Activity Logs, but it is suggestive one of the most promising of locations for the discovery of critical information related to this litigation. The same holds true for the Briefing Logs and the Administrative Segregation Logs. It would seem illogical that many of the key issues discussed in this brief are not also addressed in the Briefing Logs for Special Handling deputies, and for the Command Staff. The "AD-SEG" inmate, as has been often discussed, is the classification status attached to many informants. Thus, with the unexplained disappearance of special handling logs for long stretches of time, it is critically important that these logs be examined to determine whether comparable forms of evidence resides in these logs. Moreover, the interest by the OCSD in inexplicably destroying records that can be easily maintained permanently in computer files that require the most minimal of space adds urgency to conducting the review.

6) Re-Labeling "Informants" as "Sources of Information:" OCSD's Bold Scam To Facilitate Undetected Perjury

In the supplemental motion seeking discovery of County Counsel filings, Defendant Dekraai detailed the offensive effort of the OCSD to re-define "informant" and create a new category of jail information supplier, "source of information," to make it appear that deputies who testified in the case were telling the truth in their denials of informant activity and an informant program within the jail. The document cache, though, includes

1 two pieces of evidence that reveal an earlier and even more shocking plan to simply create
2 a new label for informants. The agency appears to have decided that it would simply stop
3 using the term “informant” and refer to those carrying out the identical acts as “sources of
4 information”—and then advance in this litigation with perjured denials of a jail informant
5 program, and perjured testimony about the use of and relationship with informants within
6 the jail.

7 A document found at Exhibit P, Shared Drive 3d, page 17, is distinctive in
8 appearance. It purports to describe information from a “Source of Information” or “SOI”
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IMAGE DELETED

19 A document found at Exhibit P, Shared Drive 3d, page 17, is distinctive in
20 appearance. It purports to describe information from a “Source of Information” or “SOF”
21 regarding a fellow inmate who was believed to be carrying a weapon to court. At the
22 bottom of the page, there is a note that a Special Handling deputy found a weapon on
23 **March 18, 2014**. In the document cache, this page appears to reflect the earliest date in
24 which either of the alternative terms (“Source of Information/SOF”) is used to describe an
25 inmate who supplies information to deputies. The timing of the first reference is
26 significant. On January 31, 2014, Defendant filed his motion to dismiss, alleging for the
27 first time that the county operated a jailhouse informant program that encouraged and
28

1 it planned to permit evidentiary hearings. On March 18, 2014, those hearings began in
2 this case with the testimony of informant Fernando Perez.

3 The document cache does not answer the question of who thought to introduce the
4 term "source of information" into the jail vernacular, or who participated in the decision
5 making process for deputies to employ it in their language and writing. The OCSD did not
6 provide any documents or communications that included directions that deputies begin
7 using the terms. Of course, the Briefing Logs would presumably contain exactly that type
8 of information, as would the Sergeants Log, which makes their disclosure essential.

9 Even in the absence of additional disclosures, communications between Deputy
10 Grover and Deputy Juan Davalos from the Riverside Sheriff's Department include eye-
11 opening insights about what transpired and the significant leadership role Grover had with
12 regard to jailhouse informants within the county.

13 Two sentences speak with clarity about the fact that the agency was simply re-
14 naming "informants" as "sources of information." Grover wrote:

15 [REDACTED]
16 [REDACTED]
17 [REDACTED] This meant, of course, that the OCSD viewed informants and
18 sources of information as identical. The subsequent effort to define the two differently
19 confirms OCSD's later developed concern that if defendant ever figured out the agency
20 was playing a re-labeling game—as it has at this moment—he would realize there has been
21 a blatant conspiracy to defraud in this courtroom. And that is precisely what occurred.

22 Davalos responded by indicating that his agency was [REDACTED]

23 [REDACTED] His e-mail also suggests that the label
24 switch was perhaps being employed in other jurisdictions, as well—possibly because of
25 what was coming to light in Orange County. It goes without saying, of course, that any
26 similarly repugnant conduct by other law enforcement agencies will never diminish the
27
28

1 stunning misconduct here, which was further aggravated by the perjured testimony that
2 followed the re-labeling—and the relentless support offered by the agency’s leadership.

3 As this Court likely recalls, in Sergeant Cope’s 2012 evaluation of Grover that came to
4 light near the time of the 2015 hearings, the supervisor noted that “Deputy Grover was able
5 to share several personal experiences with new employees and brought in two different
6 Confidential Informants to interact with their class.” (*Dekraai* Hearings, Exhibit A130.)
7 The defense confirmed through questioning that one of two individuals that Grover brought
8 in was Jeremy Bowles. (*Dekraai*, February 17, 2015, R.T., p. 6721.) However, Grover
9 testified in 2015 that what Cope wrote in the evaluation was erroneous, and in explaining
10 made an ironic word choice: “...he was not an informant. Hence, this label is incorrect.”
11 (*Ibid.*) The suggestion that Bowles was simply mislabeled is yet another testament to
12 Grover’s brazen willingness to conceal and mislead. Grover had been a key player in the
13 fraudulent relabeling effort of informants as “sources of information;” a response to this
14 litigation and the desire to hide a wide range of deceptive conduct damaging the
15 prosecution of this case and to keep secret this county’s previously unadmitted jail
16 informant program.

17 Of course, Grover knew in 2015 that the defense did not have the SH Log or the
18 document cache, and never thought Defendant Dekraai or his counsel would ever see
19 either. But one must wonder how many OCSD staff members read his testimony or were
20 aware of it. Quite clearly, in 2012 when Grover introduced Bowles to those who had come
21 to hear his comments, Bowles was introduced as an informant. The re-labeling game had
22 not been concocted in 2012, so Cope also accurately described Bowles—just as Grover had
23 at the time—as an informant.

24 Of course, the SH Log is replete with references to Bowles. Grover, himself wrote on
25 an unidentified date in 2011, that he “[s]poke with Bowles regarding some 10-35 info.”
26 (Special Handling Log, p. 769) “10-35,” of course, refers to confidential information.
27 Garcia wrote that he “[c]ontacted a Lt. at Garland PD and shared Bowles information, he
28

1 said Lt. Brown will contact me tomorrow to discuss further.” (Special Handling Log, p.
2 362)

3 In the *Wozniak* discovery of the SH Log, 141 pages were provided as part of the
4 discovery purportedly showing all contacts with Bowles. (There is not activity described
5 on every single page, as the set includes some pages to allow the defendant to determine
6 the date those contacts occurred. However, Grover documents numerous meetings with
7 Bowles.) The pages contain numerous references to Bowles being interviewed by different
8 law enforcement agencies. On December 1, 2010, Grover wrote that [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 (Bowles Special Handling Materials from *Wozniak*, p. 25.) Defendant has subpoenaed this
12 book and the recorded contacts between law enforcement and Bowles described in the
13 document cache. These materials are sought in order to potentially support defendant’s
14 arguments regarding remedies and sanctions, as the Court analyzes anew the perjury,
15 obstruction of justice and cover-up that has occurred.

16 The referenced e-mails, when examined together with the other previously hidden
17 evidence, show that none of the re-labeling and policy changing was the product of
18 thoughtful, well-intentioned analysis aimed at ensuring that the department was utilizing
19 the most accurate definition of an informant. The agency relabeled “informant” and then
20 went searching for policy language that could be adopted to make it appear that the policy
21 changes were motivated by legitimate governmental interests.

22 **7) Prior History Suggests Outside Investigation May Not Deter Misconduct by**
23 **Some OCSD Staff**

24 While the United States’ DOJ investigation, and the other pending governmental
25 inquiries, would hopefully discourage further efforts to conceal, it is very possible that
26 their investigation could have the opposite effect on some members of the OCSD. As has
27 been discussed, it now appears that the shredding of documents described in prior briefs
28

1 was not only unregulated by supervisory staff, but was not authorized under county
2 policies on the destruction of records.

3 In December of 2008, the DOJ initiated an investigation of the OCSD and its jails in
4 the aftermath of the custodial death of John Derek Chamberlain. It would have logically
5 seemed that deputies would have been hesitant to destroy governmental records, and
6 particularly those that for which destruction was not authorized. Nonetheless, on February
7 5, 2009, Grover wrote: "Sort through numerous boxes of 'Old Special Handling
8 documents' .. then Shred same@ HQ Warehouse." (SH Log, page 66) On November 29,
9 2009, Garcia wrote that he "[w]orked on desk drawer and shredded old files." (SH Log, p.
10 453.)

11 Additionally, another disconcerting entry within the SH Log documents a sergeant's
12 direction to a member of the Special Handling Unit that deputies make changes to
13 particular logs, again during the time period when the DOJ was investigating. Deputy
14 Carrillo wrote on April 8, 2009 that he "ADJUSTED[sic.] THE DISCIPLINARY
15 ISOLATION LOGS FOR THE DOJ TO MATCH THE LOGS FOR AD-SEG AND PC
16 LOGS, PER SGT JOHNSON." Special Handling Deputy Garcia had made log entries
17 indicating he was working significantly on the "DOJ project." (*Ibid.*) Of course, there
18 could exist an innocent explanation for one log being "adjusted" to "match" other logs that
19 apparently the department believed would be submitted or located by the DOJ during its
20 investigation. Though the timing of the entries adds to the cause for concern. It was
21 reported that there was "a weeklong visit and inspection in April of the five facilities by a
22 team from the Justice Department." (Abdollah, *U.S. Probes Orange County's Jail System*,
23 August 14, 2009, [http://articles.latimes.com/2009/aug/14/local/me-oc-jails-](http://articles.latimes.com/2009/aug/14/local/me-oc-jails-investigation14)
24 [investigation14](http://articles.latimes.com/2009/aug/14/local/me-oc-jails-investigation14).) Of course, there would be far less concern about an entry like this one if
25 not for the entries describing unauthorized shredding, as well as the history of misconduct
26 that has been revealed throughout the course of this litigation.

1 Per the same reporting, Sheriff Sandra Hutchens, the Commander in charge of jail
2 operations (former Assistant Mike James) and other officials met with federal inspectors on
3 April 17, 2009. (*Ibid.*) The entries bring into focus the credibility of Sheriff Hutchens'
4 assertion published in a June 2009 article, that she took steps to ensure that all jail logs
5 were computerized and would not be able to be modified.²³ Despite this claim, there is the
6 oddity both that in April of 2009 a) a Special Handling Deputy would have described
7 aligning different logs; b) the description of that alignment effort was found in the in the
8 SH Log which up until the time of its termination in 2013 entirely alterable as a Microsoft
9 Word file.

10 There is yet more evidence that the talk and walk of an OCSD under investigation
11 can be entirely unrecognizable. Then Assistant Sheriff Michael James, in charge of the
12 county's jails, stated in August of 2009 that "Even though it's been burdensome, we've
13 cooperated fully, given them all they asked for and made changes where appropriate." (*Id.*
14 at p. 7.) One would have logically thought that an agency under investigation for its
15 treatment of incarcerated inmates would have had great trepidation about violating the
16 Constitutional rights of those same inmates—particularly with the DOJ looking on—and
17 did not need to be told that it was time to stop violating rights associated with due process.
18 Nonetheless, on June 25, 2009, just two months after meeting with federal investigators
19 and two months before he told the press of the agency's progress, James authorized a
20 blatant effort to violate the Sixth Amendment by placing homicide defendant Vega and
21 informant Oscar Moriel in side-by side recorded cells to "gain valuable evidence reference
22 the murder from recorded conversations between the two." (Letter from OCSD
23
24

25 ²³ The Orange County Register reported in 2009 that the OCSD under Hutchens
26 purportedly accomplished "replacing paper jail logs with electronic ones that cannot be
27 altered once an entry is made." (Edds and Hernandez, *Sheriff Hutchens Says She's Made*
28 *Progress Revamping the Department*, Orange County Register, June 22, 2009,
<http://www.ocregister.com/articles/hutchens-168337-department-sheriff.html>.)

1 Investigator Roger Guevara to Assistant Sheriff Michael James, dated June 25, 2009,
2 attached herein as Exhibit Y.)

3 In sum, this conduct demonstrates the importance of allowing the defense access to
4 materials, such as those requested in the subpoenas duces tecum, at the earliest possible
5 date to minimize the chances of destruction and concealment.

6 **8) Additional Evidence of the OCDA's Long-Standing Knowledge of the**
7 **Jailhouse Informant Program, and Compelling Doubt That Agency Committed to**
8 **Disclosing Favorable Evidence**

9 The replacement of the OCDA with the California Attorney General ("AG") is not a
10 tonic for past discovery violations by the OCDA or the OCSD. The murder case of *People*
11 *v. Stanley Miles Simon*, et al.—one with which this Court is well familiar—offers recent
12 evidence that local governmental agencies are continuing along a path that does not
13 prioritize disclosure of favorable evidence to defendants. This is yet another case where
14 homicide defendants—five of them—stood unaware of the critical evidence impeaching
15 key witnesses as they headed toward trials, were convicted, and now sit in prison serving
16 their life sentences. Sadly, even with the disclosure of the TREDs in 2014, the prosecution
17 team demonstrated not the slightest inclination to determine whether there was evidence
18 within that repository—even though a letter from the document cache indicates the
19 prosecutor was fully informed of witness Damon Hill's outstanding work as an informant
20 prior to Hill receiving a sentence that ensured, unlike his fellow inmates, he would walk
21 free. The question of the moment? Who else besides counsel for Defendant Dekraai has
22 that letter? It should have been long ago in the hands of each of those defendants turned
23 appellants. Is it? The most likely answer is that none of them ever received it.

24 The emergence of that letter, from former Special Handling Deputy Jonathan Larson
25 to Senior Deputy District Attorney David Porter, which is found within the document
26 cache, should be perhaps the most concerning development within that case—and for
27
28

1 several reasons, has important significance to the instant matter. (Letter from Larson to
2 Hill, dated March 8, 2012, and attached herein as Exhibit W.)

3 *People v. Stanley Simon*

4 **a. Summary of Facts**

5 On March 17, 2006, Armand Jones was one of two individuals who was shot and
6 killed in the course of a robbery. (*People v. Simon*, 2013 Cal. App. Unpub. LEXIS 6189,
7 pp. 2.) The victims were among a group of club goers who had just ended their night at a
8 Denny's in Anaheim. (*Ibid.*) When two members of the group, Dwayne Washington and
9 Giovanni Boyd, went to the restroom, they were approached by several males and a female
10 who threatened to kill them, and then robbed them. (*Ibid.*) Both Washington and Boyd
11 would later identify the male with the gun as Damon Hill. (*Ibid.*) When Jones went to
12 check on his friends, an altercation occurred with Hill, which led to an exchange of gunfire
13 in the parking lot. (*Id.* at p. 3.) Hill was identified via Myspace photos and based on
14 information that he was affiliated in the Rolling 20's gang. (*Id.* at p. 2.) After Detective
15 Condon stated that there was evidence and witness statements putting Simon at the scene
16 of the crime, he that he was in the club's parking lot and the Denny's bathroom before the
17 robbery happened. (*Id.* at p. 3.) His admission came. (*Ibid.*)

18 **i. Damon Hill**

19 Hill claimed Simon was the gunman in the bathroom. (*People v. Simon*, 2013 Cal.
20 App. Unpub. LEXIS 6189, pp. 3.) "Hill, a convicted felon who was facing a sentence of
21 life without the possibility of parole for his participation in the instant crimes, testified
22 against Simon because it was 'the right thing,' and in the hope he would receive some type
23 of consideration in his own case. But he received no express or implied promise of
24 leniency in exchange for his testimony." (*Ibid.*) Knowing there was a possibility that
25 naming Simon would bring him in as a new defendant, Hill admitted that he started
26 "naming names and saying whatever [he] could to get somebody to give [him] a deal."
27 (Partial Reporter's Transcript, *People v. Stanley Simon*, et al., Super. Ct. Orange County,
28

1 No. 08NF4115, May 26, 2011, attached herein as Exhibit Z, pp. 839-40, 866.) While
2 insisting that coming out of his silence was the right thing, he added that for “what [he’s]
3 doing here today, it would be nice” to get a determinate amount of years in prison as
4 opposed to the life sentence he currently faced. (*Id.* at 865.) Hill admitted that during his
5 contact with Detective Condon and Deputy Larson, he had hoped for some consideration in
6 reducing his sentence later on. (Partial Reporter’s Transcript, *People v. Stanley Simon*, et
7 al., Super. Ct. Orange County, No. 08NF4115, May 25, 2011, attached herein as Exhibit
8 AA, at 744).

9 **ii. Jeremiah Rodriguez**

10 “Jeremiah Rodriguez agreed to testify for the prosecution in exchange for a reduced
11 term on crimes unrelated to the shooting.” (*People v. Simon*, 2013 Cal. App. Unpub.
12 LEXIS 6189, pp. 4.) While housed at Theo Lacy Jail, Rodriguez and Hill were cellmates,
13 and were conveniently placed in the same module as Simon. (Exhibit AA, pp. 646, 690-
14 691.) Rodriguez was aware that Hill had discovery from his case in their cell yet denied
15 ever looking at it with him. (*Id.* at 690-91.) He later testified to knowing another co-
16 defendant in the robbery that was also in close proximity to himself and Simon in the jail.
17 (*Id.* at 718-19.) It quickly appeared to be no coincidence that Rodriguez began meeting
18 with Simon during dayroom, where Simon recounted the events of the crime to him. (*Id.* at
19 646.) Each time these meetings occurred, Rodriguez testified that he took notes with the
20 intention of using them to help his own case. (*Id.* at 648.) The court termed his actions as
21 “foresight.” (*People v. Simon*, 2013 Cal. App. Unpub. LEXIS 6189, pp. 4.) When asked
22 why he was testifying, Rodriguez stated he wanted to be afforded some type of alternative
23 sentence. (Exhibit AA, at pp. 646, 690-691.)

24 **The 2012 Larson Letter to Prosecutor Porter**

25 Although gang prosecutor Porter was almost certainly well aware of the jailhouse
26 informant program well before 2012, any plausible claim of ignorance would have
27 vanished upon receipt of Larson’s letter, forwarded shortly before the prosecutor agreed to
28

1 a determinate sentence for a man originally suspected to be the gunman and killer. (*People*
2 *v. Damon Hill*, No. 08NF4115, Partial Register of Actions, attached herein as Exhibit BB.)

3 The tone of Larson's letter certainly does not suggest that he expected a response of
4 shock and surprise from the recipient prosecutor upon reading the deputy's description of
5 his duties and the incredible quantity of work that Hill had done in support. Larson
6 describes working with [REDACTED]

7 [REDACTED]
8 He wrote that [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 Of course, the defendants should have been informed—including at the post-
14 conviction stage—that the possible murderer turned witness, who had attempted to
15 convince jurors he was testifying against his alleged accomplices principally because it was
16 the right thing to do, was also working day and night as a "snitch" in the infamous Mod J
17 (which the same Deputy Larson admitted was an informant tank in 2015 testimony.) The
18 defendants' attorneys would have wanted to inquire extensively about Hill's work, his
19 motivations, and about who prompted Larson to write this letter to Hill's prosecutor.
20 Certainly, Larson would never dare claim that he simply woke up one morning and
21 decided, without the prior prodding, that it was time to craft a letter of appreciation for one
22 of his most treasured informants.

23 It will undoubtedly be troubling to learn that while Porter should have immediately
24 sent this letter to each of the defendants, there was time to have it introduced into the trial
25 of two of the defendants, Nicholas Valerio and Jarrell Kelly. Hill testified in their case on
26 March 7, 2012. (Exhibit D.) The following day Larson sent the letter to Porter. Certainly,
27 it must have arrived before closing argument on March 12, 2012. (Exhibit D.) Jurors did
28

1 not convict until the afternoon of March 13, 2013, five days after Larson's letter was dated.
2 (Exhibit D.)

3 Surely the letter's arrival was not delayed for four months, which is the amount of
4 time Porter had to disclose it to Valerio and Kelly before they were sentenced to life
5 without possibility of parole in July of 2012. (Exhibit D) If Porter had inexplicably
6 forgotten about the letter and its significance, he must have remembered it on May 4, 2012,
7 when he dismissed a string of Hill's charges, including special circumstances murder,
8 attempted murder, three charges of robbery and numerous enhancements. (Exhibit BB)
9 Porter permitted Hill to plead to voluntary manslaughter with enhancements for a total
10 sentence of 19 years. (Exhibit BB) Of course, every day for more than four years, Porter
11 has had the chance to disclose the letter to the defendants or their counsel. If he attempted
12 to remove the withholding of evidence from his thoughts, he was nonetheless confronted
13 with reminders of the litigation.

14 On October 3, 2014, Defendant Yolanda Brown was resentenced in this Court with
15 prosecutor Porter present and participating. It was that month that the defense in this case
16 discovered the TRED database, which undoubtedly became a subject of considerable
17 discussion within the OCDA. With Porter knowing that Hill was not just an accomplice,
18 but a major informant, it must have crossed his mind that the TREDs for Hill and
19 Rodriguez could be highly significant to the issue of whether the defendants had fair trials.

20 Had the letter still not arrived in 2014? Once again, the letter is included in the
21 document cache provided to this Court in December of 2016. If the agency reviewed the
22 document cache with the same close scrutiny prosecutors promised in June of 2016 when
23 the SH Log emerged, how could prosecutors have not quickly found and disclosed the
24 letter to Simon and his co-defendants? Likely for the same reason that SH Log entries
25 related to Hill and Rodriguez were not disclosed to them until the pressing of Simon and
26 his counsel left no choice. The ideals espoused in the OCDA's press release were created
27 for the public to digest, not for the agency to adopt. This divide between talk and action is
28

1 highly relevant not just to these defendants, but to Dekraai, because they reflect upon the
2 agency's willingness to persistently conceal evidence when its disclosure may change the
3 preferred outcome or deliver institutional embarrassment.

4 Larson's letter also points to the existence of still more repositories of informant
5 evidence. The massive quantity of work by Hill referenced in the letter logically was
6 tracked and described in some location. The habeas petition attaches the Special Handling
7 Log entries related to Hill and the TREDs that the government has indicated are relevant to
8 Hill. But the TREDs and SH Log entries do not memorialize the work Hill did over the
9 course of approximately three years. A key remaining question, therefore, is where the
10 descriptions and documentation of the informant work done by Hill, as well as Frosio,
11 Fenstermacher and others, are actually maintained.

12 In April of 2016, with the emergence of the SH Log, Porter would have rationally
13 have thought that there would be information relevant to Simon and Rodriguez within it. A
14 simple word search would have taken him and the OCDA toward significant information
15 helpful for the defense.

16 For instance, defense counsel would have liked to (and had the right to) question
17 Hill about an entry in the SH Log that suggested the star witness might not have been
18 walking the straight path he projected in his testimony or that Larson suggested in his
19 letter. A Special Handling Deputy wrote in the SH Log on December 27, 2010 the
20 following:

21
22 HILL, DAMON – HILL is up to some shenanigans, the mail room sent a 925 letter
attn: Grover it was from Kincaid from our facility to J. Barber cdc#2527???
23 KINCAID is at TL and the letter was mailed from the CJX?? Earlier today I go[t] a
24 kite from PLATT and it was from HILL going to FROSIO about issues with his
stolen chrono. PEREZ was paid \$40 bucks to get HILL a chrono but it seems like
25 PEREZ told HILL to pound sand! Well I showed Grover the Kite and when Grover
got the letter he said it looks like HILL's writing?? Well I have to call up to Wasco
26 SP to see what's up with J. Barber and why would HILL use Kincaid[']s name.
27 (Exhibit U, p. OCSD 72) (emphasis added)
28

1 The “shenanigans” of Hill apparently involved and attempt to purchase from
2 “Perez”—likely Fernando Perez—a fraudulent “shoe chrono.” Hill’s probable goals was
3 obtaining special shoes, rather than those generally issued in the jail. It also appears from
4 the log that Hill may have written a letter falsely using inmate Kincaid’s name. Again,
5 counsel had the right to question Hill about this conduct, reflecting upon his honesty and
6 contradicting his effort to present himself as a changed man beginning with his 2009
7 proffer.

8 This entry also serves as a reminder that the presentation of a particular inmate by
9 members of the OCSD can fluctuate based simply upon whether that inmate is considered a
10 friend to the government in that moment. Larson, who was utilizing the SH Log during the
11 time period when he wrote the letter to Porter, chose to omit this damaging entry that could
12 make Hill appear less appealing—less changed to a sentencing court—while creating a
13 *Brady* obligation for the prosecutor that would stimulate more problems and questions.

14 In this brief, Defendant will not proceed item through item over what was not turned
15 over to Simon and his co-defendants, as identified in the petition for habeas corpus.
16 However, in analyzing any potential counter-contention that Porter was somehow unaware
17 of the letter that was sent to him in 2012 and again when it was provided to the OCSD in
18 2016 as part of the document cache, it is worth considering a previously undisclosed
19 recorded contact visit with Hill. As this Court remembers, Hill testified in Simon’s trial
20 that he lacked any information leading him to believe he was awaiting a reduced
21 sentence—instead of life without possibility of parole—when it was his time to have his
22 case addressed. However, within the petition is a transcript of a recorded contact with
23 “Miesha,” identified in the document cache. (Exhibit U [*Simon* Petition], and Exhibit B
24 attached.) The following excerpt is especially revealing:

25 Hill: (Clearing throat) I am going to go with what I was told already this
26 whole 5 or 6 year thing. **That is coming from the DA's Investigator, not**
27 **the DA himself but this is this dudes partner he has been on this case the**
28 **entire time.** He taken out of top, you know? Like this is what we want, I am

1 pulling for him personally, I believe him he has done such a great job, he got
2 us this many convictions whatever the case, whatever he is gonna go in there
3 telling people I know he pulling for me the DA's investigator is, so amma go
4 with that. And like I said 5 or 6 years credit, I've been here almost 4 and so I
5 either got 1 year left or some months. They can give me credit for time
6 served, that's why, they can do that, they got that power they got that
7 authority.

8 Miesha: But, do you think they are going to do that?

9 Hill: I am not going to allow myself to believe that. I ain't going to do that to
10 myself.

11 Miesha: **I thought they had said like 20 years or something?**

12 Hill: Yeah right! Let's go to trial then, how bout that? I am not taking no 20
13 years, Fuck no! And besides that is out of the question that is not even
14 realistic.

15 Miesha: 10 years is, huh?

16 Hill: Even that Twill still be in good shape, 4 years credit, plus they take that
17 off the top, plus the 80%. I have a couple years left. (*Id.* at p. 3) (emphasis
18 added.)

19 His not-so-private conversations could not have sounded any more different than the
20 testimony he delivered:

21 Q. You knew about, that if eventually your charge could get reduced down to
22 something like voluntary manslaughter, that you could get a determinate
23 number of years in prison. Is that right?

24 A. Yes.

25 Q. And even before you said one word here today, you knew that fact.

26 A. Yes.

27 Q. That fact is something that's a big motivation to your wanting to testify
28 against Stanley Simon. Is that not true? [REDACTED]

A. That's not true. [REDACTED]

Q. Well, you got on the stand earlier on direct examination and said to Mr.
Porter that the reason that you're here testifying, even though there's no
agreement, is because you want to do the right thing.

A. Yes.

Q. Does the right thing mean to eventually get charges lowered against you
so you face a determinate number of years in prison as opposed to life
without possibility of parole?

A. Doing the right thing was coming out of my silence.

1 Q. And if you can testify enough to convince the prosecutor that you've
2 cooperated as per the agreement that they've talked about, you're hoping to
3 get a benefit from it, aren't you?

4 A. Yes. [u]

5 Q. And that benefit is what, Mr. Hill? [u]

6 A. I don't know. [u]

7 Q. You've talked to your lawyer, Mr. Clapp, about it; yes? [u]

8 A. Talked to him about what? [u]

9 Q. You have an expectation of what you could get if you cooperate and you
10 testify and the district attorney finds that your testimony was useful, do you
11 not?

12 A. I talked to him about it, yes. [u]

13 Q. What is that expectation that you want? [u]

14 A. At this point, I don't have any. [u]

15 Q. What is it you're hoping will happen? [u]

16 A. I'm not hoping anything will happen. [u]

17 Q. Mr. Hill, you want in the worst way to get a determinate number of years
18 in prison, don't you? [u]

19 A. I mean it—for what I'm doing here today, it would be nice but –

20 Q. Okay.

21 (Reporter's Transcript, *People v. Stanley Simon*, et al., Super. Ct. Orange
22 County, No. 08NF4115, May 26, 2011, pp. 833-35, attached here in as
23 Exhibit CC.)

24 For *Simon* and his co-defendants, these contrasting transcripts are evidence of 1) perjury by
25 Hill; 2) significant deception by the prosecution team; 3) very serious *Brady* violations and
26 4) that the non-disclosure of the Larson letter was part of a multi-pronged effort to win
27 through deception. For *Dekraai*, what has occurred is evidence of a deeply imbedded
28 disgust or complete disinterest in turning over favorable evidence. Both agencies knew
that Hill was being recorded. The OCDA or the investigating agency asked that Hill have
his contacts recorded. Those recordings should have been disclosed to the defendants

1 under both *Brady* and Penal Code Section 1054—as should have been the SH Log, the
2 TREDs and the Larson letter.

3 Thus, in questioning whether the AG will somehow be able to ensure that all
4 favorable evidence created or obtained before this agency became the prosecutor of record
5 in this matter, one might ask the following: Is it reasonable to believe that the long
6 undisclosed evidence described above would have made its way to Simon and his co-
7 defendants if the AG had been appointed to that case following recusal?

8 **8) OCDA's Delayed Disclosures of Other Special Handling Logs**

9 During an evidentiary hearing conducted in *People v. Wozniak* related to the
10 disclosure of the SH Log, Classification/Special Handling Sergeant Kirsten Monteleone
11 testified that she asked unidentified current Special Handling deputies whether they kept or
12 were aware of a Special Handling Log at Lacy, and they said they were not. (Partial R.T.
13 *People v. Wozniak*, May 3, 2016 and May 5, 2016, attached herein as Exhibit V, pp. 3688-
14 3689.) Senior Deputy District Attorney Eric Scarbrough was present for the prosecution
15 during this questioning. Pejeau participated in the hearings, and remained present
16 throughout the hearings.

17 Monteleone was asked by Scarbrough during his examination, “Was there any
18 contact made with regards to sergeants over at Special Handling at Theo Lacy with regards
19 to, ‘Hey, we’ve found that there are deputies who are using something called a ‘Special
20 Handling Blog?’ Do your personnel, your staff have anything like that over at Theo Lacy?”
21 She replied, “That question was asked by another command[er], and there wasn’t – I
22 personally – I personally didn’t have that conversation.” Scarbrough then asked, “But
23 you’re aware of that questioning was done, or that search was done, and it turned up with
24 negative results? There is no other Special Handling Blog over at Lacy?” She answered,
25 “Correct.” (*Id.* at 3831.)

26 Sergeant Mark Peters was also questioned on this subject. Attorney Sanders
27 returned to the subject matter, with Assistant District Attorney Daniel Wagner present for
28

1 the prosecution. Peters said that he also spoke with Monteleone about whether there was
2 log/blog at TLF. Peters testified that he learned from Monteleone that there was not a log
3 used by Special Handling at Lacy. He said, "The same drive is available at Theo Lacy.
4 And she looked at that drive and made – and determined there – that it wasn't there." (*Id.* at
5 pp. 3900-3901.) Peters stated that "[a]nd also in addition [Monteleone] talked to the
6 supervisors and staff at Theo Lacy on that." (*Ibid.*) He added, "I don't know the specifics.
7 Asked specifically if there's something like this kept at Lacy and that she has access to that
8 drive, and she checked it. She also spoke to the staff there." (*Id.* at p. 3903.)

9 On December 16, 2016, the government, via Baker, revealed for the first time to
10 Defendant Dekraai that there were Special Handling logs at Lacy—Wozniak was
11 sentenced to death prior to this disclosure:

12
13 10. I am informed and believe that various other "logs" appear to have been
14 sporadically maintained at the Theo Lacy Facility and the Intake Release
15 Center by Classification and Special Handling covering periods of time
16 before, during and after the time period covered by the Log. Most of these
17 logs appear to have been misguided attempts to document Special Handling
18 and Classification deputies' work. Generally speaking, the logs kept after
January 2013 primarily reflect the deputies' daily tasks and do not contain
detailed information like the Log. (Exhibit R, p. 4.)

19 Of course, the difference in time between when the OCDA and OCSD first learns of
20 favorable evidence and when that evidence is ultimately disclosed can be separated by
21 months or years—if said disclosure is ever made. Baker chose not place a specific date
22 within his declaration indicating when in 2016 the agency first realized that the logs were
23 maintained by Lacy Handling deputies.

24 A string of e-mails between Monteleone and Wagner, however, lends additional
25 insights. On June 16, 2016, exactly one week after Wagner appeared before this Court to
26 first turn over the SH Log, Monteleone wrote an e-mail to Wagner with the heading

27 [REDACTED] Monteleone stated, [REDACTED]
28

1 [REDACTED]
2 [REDACTED]
3 However, as this Court knows, the Court did not receive any supplemental materials for its
4 review until December 6, 2016, when additional logs were provided as part of the
5 document cache.²⁴ What exactly happened between June 16, 2016 and December 6, 2016
6 with regard to the additional remains a concerning and unnecessary mystery.

7 On August 11, 2016, Wagner wrote an e-mail to Monteleone stating that in order to
8 respond to Defendant Dekraai's recently filed informal discovery request he needed to

9 [REDACTED]
10 [REDACTED] It appears that even though Wagner had received
11 the more logs two months earlier, he chose not to examine them until a defense discovery
12 request was presented. This response hardly seems consistent with agency's "action plan"
13 described in its press release of June 9, 2016, which stated the following:

14 An experienced prosecutor will be assigned to review the SH Log for the
15 purpose of identifying all other current and former criminal defendants who
16 are identified in the SH Log. This prosecutor, working with the trial
17 prosecutor assigned to each identified defendant, will then determine whether
18 each identified defendant received the material to which he/she is entitled.
(OCDA Press Release, June 9, 2016,
19 <http://orangecountyda.org/civica/press/display.asp?layout=2&Entry=4834.>)
20
21
22

23 ²⁴ In Baker's declaration submitted one month earlier, he elected not to mention that
24 additional special handling logs had been created both at the IRC and Lacy, but he did
25 write that "[b]eginning in May 2016, OCSD began providing a variety of deputy notes,
26 emails work logs, daily activity logs, memoranda, and other documents to the OCDA as a
27 result of the ongoing investigation." (Exhibit T.) None of these documents were disclosed
28 to the court or defense prior to December 2016.

1 Certainly, the OCDA would not have the audacity to claim a *Brady* examination of
2 additional logs from Lacy—comparable to the one that supposedly was being undertaken
3 by his agency with regard to the (Intake Release Center) SH Log—was somehow
4 unnecessary. Moreover, the failure to study the a Special Handling log from Lacy raises
5 the question as to whether it would have ever been examined, and the contents disclosed—
6 if they even have been now—in the absence of a discovery request. Again, this is
7 particularly concerning because the materials were clearly referenced as [REDACTED]
8 And perhaps most alarming is that Wagner was describing a folder he was looking at
9 which he said based upon the screenshot of the table of contents was entitled [REDACTED]
10 (*Ibid.*)

11 Wagner certainly realized the importance of a [REDACTED] both because Dekraai was
12 primarily housed at Lacy, and because he personally knew that in *Wozniak*, Monteleone—
13 the person with whom he was communicating—had claimed that her investigation led to a
14 determination that no special handling logs were created at Lacy. As the head of the
15 homicide unit, Wagner unquestionably realized that Wozniak would be sentenced to death
16 the next month unless the defense prevailed on a motion for new trial—and that he did not
17 have the logs from Lacy.

18 In a subsequent e-mail, Monteleone clarified that some of the documents within the
19 TL Logs folder are [REDACTED]
20 [REDACTED] However, in a series of e-mails that
21 followed one week later, Wagner stated that believed that there were [REDACTED] and
22 that they appropriately should be discovered to the defense:
23
24
25
26
27
28

IMAGE DELETED

23
24 As indicated above, Wagner stated that he would submit the logs to the Court at the
25 “upcoming” hearing, and Monteleone would have a chance to assert “claim(s) of
26 privilege.” (*Id.* at Inmate F35116.) That upcoming hearing took place two days later, on
27 August 19, 2016. However, the referenced logs were not disclosed to the court or the
28

1 defense and were never submitted for this Court to examine as part of its analysis of special
2 handling logs. The reason for abrupt shift in directions—one that is not elucidated through
3 any additional disclosed communications—should be immensely concerning. Moreover, it
4 must be emphasized that it remains unknown what logs were actually included in the
5 [REDACTED] that Wagner believed the defense should have, or whether they were
6 included with the document cache turned over to this Court on December 6, 2016.

7 Of course, if disclosures to this capital defendant, Scott Evans Dekraai, were
8 delayed in order to decrease the chances that another capital defendant might learn of
9 favorable evidence, it has immense relevance to determining remedies and sanctions in this
10 case. Additionally, this Court heard extensive testimony from Wagner in 2014, and made
11 factual findings about the prosecutor's credibility in determining the remedies and
12 sanctions to be imposed. Defendant anticipates asking for additional testimony from
13 Wagner and will likely request that the court reconsider its credibility findings as they
14 relate to the appropriate remedies and sanctions that should ordered.

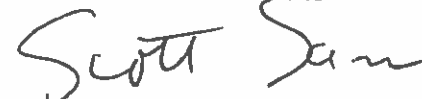
15 CONCLUSION

16 The evidence and analysis provided above should be considered in Defendant's
17 request to dismiss the death penalty, and his request that this Court order disclosure of the
18 materials identified in the defense subpoenas (Exhibit A). Additionally, it is respectfully
19 requested that this Court order that the OCSD not destroy Sergeant's Activity Logs,
20 Briefing Logs and Housing/Floor Logs.

21
22 DATED: March 29, 2017

Respectfully submitted,

23 SHARON PETROSINO
24 Public Defender
25 Orange County
26 SARA ROSS
27 Senior Public Defender

28 

Scott Sanders
Assistant Public Defender