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7 ROBERT ANTHONY LASTRA, JR.

ELECTRONICALLY
FILED
2/8/2021 8:00 AM
SAN LUIS OBISPO SUPERIOR COURT
BY C. PEREZ
C. Perez, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN LUIS OBISPO

10 PEOPLE OF THE STATE OF CALIFORNIA, Case No. 20F-06361-A

11
12 Plaintiff,

13 v.

14 ROBERT ANTHONY LASTRA, JR.,

15
16 Defendant.

17
18 NOTICE OF MOTION AND MOTION TO
19 COMPELL ATTORNEY GENERAL TO
20 PRODUCE MURGIA/ARMSTRONG
21 DISCOVERY ORDERED BY HON. JUDGE
22 GUERRERO ON DECEMBER 11, 2020;
23 REQUEST FOR SANCTIONS.

24 Dept.: 8
25 Date: March 3, 2021
26 Time: 8:30 a.m.

27
28 TO THE CLERK OF THE COURT, THE ATTORNEY GENERAL OF THE STATE OF
CALIFORNIA, THE DISTRICT ATTORNEY FOR THE COUNTY OF SAN LUIS OBISPO,
OTHER INTERESTED PARTIES AND THEIR COUNSEL:

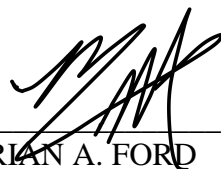
PLEASE TAKE NOTICE that on the date and time indicated above Defendant ROBERT
LASTRA, by and through counsel, will move this Court for an order compelling the Attorney
General's Office to immediately comply with Honorable Judge Matthew G. Guerrero's order of
December 11, 2020, granting Defendant's request to compel Murgia/Armstrong discovery, which
was to specifically include (1) forms referring cases for prosecution; and (2) other documentation of
the decision-making process such as internal memoranda and the correspondence and/or minutes of
meetings between the prosecutor's office and law enforcement personnel. Case No. 20M-05512 &

1 20F-06361, Ruling: Motion to Compel, filed December 11, 2020, at p. 4. Defendant understands
2 these orders to relate to the discriminatory or unlawful prosecution of racial minorities, Black
3 people, members of Black political organizations, members of any Black Lives Matter organizations,
4 or people affiliated with the Black Lives Matter movement; as compared to other similarly situated
5 groups, people, members of political organizations, or persons associated with political movements;
6 and to the types of crimes alleged in the charging documents of case numbers 20M-05512 and 20F-
7 06361.
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9
10 Additionally, Defendant seeks any other lawful order this Court deems appropriate in light of
11 the prosecution's unnecessary and unjustified failure to comply with Judge Guerrero's December 11,
12 2020 order granting Defendant's request to compel Murgia/Armstrong discovery, despite defense
13 counsel's explicit requests to do so while Judge Guerrero's December 11, 2020 order recusing the
14 District Attorney and appointing the Attorney General was in effect.
15

16 This motion is made pursuant to Penal Code sections 1054(e), 1054.5(b), this notice, the
17 attached memorandum of points and authorities, the proposed order, the files and records in this case
18 and also in Case No. 20M-05512—inclusive of oral arguments and evidentiary exhibits, the
19 Constitutions of the United States and the State of California, as well as any evidence, testimony, or
20 argument to be presented at the hearing on this motion.
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22 Dated: February 7, 2021



BRIAN A. FORD
Attorney for Defendant
ROBERT LASTRA

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3. Any record, documentation, notes, or other materials from the past twenty (20) years indicating illegal arrest or detention of racial minorities, Black people, members of Black political organizations, members of any Black Lives Matter organizations, or people affiliated with the Black Lives Matter movement, in San Luis Obispo County.
4. All statements of policy from the last twenty (20) years, however recorded, including but not limited to: general orders, field operations, training, crowd control, or other law enforcement manual by the San Luis Obispo Police Department, the San Luis Obispo County Sheriff’s Department, the San Luis Obispo Area CHP, or any cooperating agency, concerning enforcement of laws or arrests of racial minorities, Black people, members of Black political organizations, members of any Black Lives Matter organizations, or people affiliated the Black Lives Matter movement.
5. Any and all information, records, documents, police reports, or other materials related to any pasts arrests from the last twenty (20) years of members of any racial minority political organizations, Black political organizations, members of any Black Lives Matter organizations, or people affiliated the Black Lives Matter movement, in San Luis Obispo County.
6. Defendants’ request includes any intelligence or information gathered by the San Luis Obispo Police Department, the San Luis Obispo County Sheriff’s Department, the San Luis Obispo Area CHP, or any cooperating agency, which includes names of specific individuals related to or associated with any racial minority political organizations, Black political organizations, members of any Black Lives Matter organizations, or people affiliated the Black Lives Matter movement.
7. Any and all records, regardless of format, of any communications between the San Luis Obispo County District Attorney’s Office and the San Luis Obispo Police Department, the San Luis Obispo County Sheriff’s Department, the San Luis Obispo Area CHP, or any cooperating agency, regarding racial minorities, Black people, members of Black political organizations, members of any Black Lives Matter organizations, or people affiliated the Black Lives Matter movement.
8. The total number of investigations, arrests, and/or criminal prosecutions over the last twenty (20) years of Black people in San Luis Obispo County.

See, Case No. 20F-06361, Omnibus Pre-Trial Motions Lodged by Reference (Joining Motions from 20M-05512), filed on November 30, 2020, at pp. 13-15.

On December 10, 2020, a hearing on Lastra’s pre-trial motions was held before Honorable Judge Matthew G. Guerrero. On December 11, 2020 Judge Guerrero issued four written decisions: (1) denying Lastra’s demurrer; (2) denying Lastra’s request for Prohibiting Public Pre-Trial

1 Comment; (3) **granting** Lastra’s Motion to Compel Discovery; and (4) **granting** Lastra’s motion to
2 disqualify the San Luis Obispo County District Attorney’s Office.

3 In his decision granting Lastra’s motion to compel, Judge Guerrero wrote:

4
5 These cases before the Court stem from Black Lives Matter protests and have
6 undeniable racial overtones. Concerns over the equal hand application are adequately
7 presented to justify discovery. **Based on the evidence presented and consistent
8 with the Court’s contemporaneous ruling on the Recusal Motion, the defense has
9 met the burden necessary to order discovery consistent with a
10 Murgia/Armstrong request.**

11 However, the Court finds that the requested information is overbroad, and not
12 provided for within the provisions of Penal Code §1054, et seq., and much has
13 already been produced.² **Defendants Motion to Compel is granted consistent with
14 this ruling; to specifically include (1) forms referring cases for prosecution; and
15 (2) other documentation of the decision-making process such as internal
16 memoranda and the correspondence and/or minutes of meetings between the
17 prosecutor’s office and law enforcement personnel.** The parties are ordered to meet
18 and confer regarding any further requests not covered by this order.

19 *See*, Case No. 20M-05512 & 20F-06361, Ruling: Motion to Compel, filed December 11, 2020, at p.
20 4 (emphasis added).

21 Concerning Judge Guerrero’s ruling on the Motion to Disqualify the San Luis Obispo County
22 District Attorney’s Office, Judge Guerrero made the following specific findings:

23 The September 4, 2020 email establishes a clear conflict of interest. First, by
24 delivering this fundraising email to potentially tens of thousands of people
25 immediately after the filing of charges, **Mr. Dow sought political and professional
26 benefit and campaign contributions in conjunction with the prosecution of the
27 above-entitled cases.** This creates a bias towards charging and the particular
28 outcome, which makes it unlikely that the defendant will receive fair treatment during
all portions of the criminal proceedings. Second, **the statement used inflammatory
terms such as “anarchist”, “crazy” and “whacky”, which is an extrajudicial
statement made to potential jurors in an attempt to sway them and get them to
make a financial contribution.** This interferes with the Defendants right to a fair
trial.

The men and women charged here are entitled to a prosecution not clouded by
political or personal advantage to the prosecutor. This is especially pointed in a case
where defendants are protesting injustice and systemic bias. The Court must protect
all parties’ right to due process and to seek justice.

² *See*, fn. 1, *supra*.

1 **The Court finds an apparent and actual conflict of interest** making it
2 unlikely that the defendants will receive fair treatment during all portions of the
3 criminal proceedings.

4 **The Court also finds that this disqualification [sic.] compromises the**
5 **impartiality of the entire office of the San Luis Obispo District Attorney.** Mr.
6 Dow is the elected official of a relatively small office with less than 40 attorneys.
7 Each attorney answers directly to Mr. Dow and has a relationship with Mr. Dow.

8 The Motion to Disqualify the San Luis Obispo District Attorney’s Office is
9 granted and the Attorney General of the State of California is directed to represent the
10 People of the State of California in these matters.

11 *See*, Case No. 20M-05512 & 20F-06361, Ruling: Motion to Recuse the District Attorney’s Office,
12 filed December 11, 2020, at pp. 4-5. It should be noted that on appeal these findings, are evaluated
13 under the substantial evidence—they can only be disturbed if unsupported by substantial evidence.
14 Haraguchi v Superior Court (2008) 43 C4th 706, 711 .

15 At the time of Judge Guerrero’s rulings on December 11, 2020, Zee Rodriguez appeared for
16 the Office of the Attorney General, which took over prosecution of the case pursuant to Judge
17 Guerro’s order disqualifying the San Luis Obispo County District Attorney’s Office from the case,
18 pursuant to Penal Code section 1424. William Frank, representing the Office of the Attorney General
19 moved for and received continuances on December 15, 2020 and January 5, 2021.

20 On January 6, 2020, the San Luis Obispo District Attorney’s Office transmitted electronic
21 discovery to counsel, in violation of Judge Guerrero’s order recusing them from the case. On
22 January 4, 2020, prior to this violation, counsel had emailed Mr. Frank directly and specifically
23 objected to “any violation of Judge Guerrero’s order and any further involvement of Mr. Dowd’s
24 Office in this case,” and specifically requested production of Murgia discovery on Mr. Dowd’s
25 Office. Further, on January 4, 2020, counsel again emailed Mr. Frank and asserted that Dan Dow’s
26 Office must be “firewalled off” from discovery in this case because Dan Dow’s office is conflicted.

27 On January 8, 2021, both the Office of the Attorney General and the San Luis Obispo County
28 District Attorney’s Office filed notices of appeal, challenging Judge Guerrero’s order disqualifying

1 the District Attorney's Office in both Case Number 20M-05512 and 20F-06361. Save for the
2 operation of Penal Code section 1424(a)(1), no stay has issued in either matter from either the trial
3 court nor the courts of appeals. No party in either action has requested a stay of the proceedings.
4 Neither the Attorney General nor the District Attorney have challenged Judge Guerrero's ruling on
5 Lastra's Motion to compel.
6

7 On February 2, 2021, both Mr. Frank for the Attorney General's Office and Mr. Henretty for
8 the District Attorney's Office contended that this Court retains jurisdiction of the matter for all
9 issues other than the section 1424 recusal order.
10

11 No discovery compelled by Judge Guerrero's order in his Ruling on the Motion to Compel
12 has been provided to the defense to date. Counsel has no reason to believe the Attorney General has
13 taken any affirmative steps to preserve the ordered Murgia/Armstrong discovery, nor in any other
14 way effectuate Judge Guerrero's December 11th order granting the Murgia/Armstrong discovery.
15 The task cannot be left to the District Attorney's Office because the District Attorney's Office is
16 conflicted. Herein, Defendant Lastra seeks to remedy the Attorney General's disregard of the
17 Superior Court's order, seeking an enforceable order compelling the Attorney General to comply
18 with Judge Guerrero's order for Murgia/Armstrong discovery, and any other sanction deemed
19 appropriate by the Court under the circumstances.
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22 I.

23 DESPITE THE NOTICES OF APPEAL FILED BY THE OFFICES OF
24 THE ATTORNEY GENERAL AND THE DISTRICT ATTORNEY,
25 THIS COURT RETAINS JURISDICTION OVER THE ORDER
26 COMPELLING MURGIA/ARMSTRONG DISCOVERY.

26 Penal Code section 1424(a)(1) says in pertinent part:

27 ... An order recusing the district attorney from any proceeding may be reviewed by
28 extraordinary writ or may be appealed by the district attorney or the Attorney

1 General. The order recusing the district attorney shall be stayed pending any review
2 authorized by this section.

3 Here, both the Attorney General and the District Attorney have filed notices of appeal, which works
4 an automatic stay of Judge Guerrero’s recusal order.

5 However, not all proceedings in the lower court are stayed. As stated in Reed v. Superior
6 Court (2001) 92 Cal.App.4th 448:

7
8 We hold an appeal from a pretrial order denying a motion to disqualify opposing
9 counsel for a conflict of interest does not, automatically, stay all trial proceedings
10 pursuant to Code of Civil Procedure section 916, subdivision (a), which provides, in
11 pertinent part, "the perfecting of an appeal stays proceedings in the trial court upon
12 the judgment or order appealed from or upon the matters embraced therein or affected
13 thereby." An order denying disqualification of counsel is appealable as an order on a
14 collateral matter or an order denying an injunction, but such an appeal does not lead
15 to an automatic stay of the trial. If, pending an appeal of an order denying
16 disqualification of counsel, the unsuccessful moving party desires a stay or a
17 continuance of the trial proceedings on the merits, which the trial court in its
18 discretion denies, the party must seek a writ of supersedeas or other discretionary stay
19 from the appellate court.

20 *Id.*, at 450. Specifically, the Reed Court concluded, “the question whether discovery or trial should
21 be stayed pending an appeal from an unsuccessful motion to disqualify counsel rests in the discretion
22 of the trial and appellate courts.” *Id.*, at 455.

23 This Court has not addressed the issue of discovery while the prosecution appeals the recusal
24 order. No stay has been requested and no stay has been granted, so Judge Guerrero’s ruling ordering
25 production of the Murgia/Armstrong discovery is valid and enforceable, and this Court retains the
26 jurisdiction to enforce it. Mr. Lastra seeks that enforcement now.

27 II.

28 DEFENDANT IS ENTITLED TO MURGIA/ARMSTRONG
DISCOVERY.

On December 11, 2020, Honorable Judge Matthew Guerrero ordered the production of
Murgia/Armstrong discovery in a written ruling. This ruling was “[b]ased on the evidence presented

1 and consistent with the Court’s contemporaneous ruling on the Recusal Motion.” *See*, Case No.
2 20M-05512 & 20F-06361, Ruling: Motion to Compel, filed December 11, 2020, at p. 4. It was “to
3 specifically include (1) forms referring cases for prosecution; and (2) other documentation of the
4 decision-making process such as internal memoranda and the correspondence and/or minutes of
5 meetings between the prosecutor’s office and law enforcement personnel.” *Id.*

7 Moreover, on January 4, 2020, counsel specifically requested of Mr. Frank that the Attorney
8 General’s Office comply with Judge Guerrero’s order compelling Murgia/Armstrong discovery.
9 Despite Judge Guerrero’s order, and despite counsel’s specific request, Mr. Frank and the Attorney
10 General’s Office has ignored this Court’s order.

12 Penal Code section 1054.5(b) permits defendant to request this Court’s order “[i]f within 15
13 days the opposing counsel fails to provide the materials and information requested. California’s
14 reciprocal discovery scheme (Penal Code §§1054-1054.7) expressly allows for discovery outside its
15 statutory terms, as mandated by the United States Constitution and by other express statutory
16 provisions. (Pen. Code §1054(e).) The court may therefore order discovery to satisfy the provisions
17 of a federal or state constitutional directive, case authorities decided under such a provision, another
18 statute providing for discovery, under common law principles and theories, and pursuant to a
19 particular provision of the reciprocal discovery scheme. Izazaga v. Superior Court (1991) 54 Cal. 3d
20 356, 377-378; Albritton v. Superior Court (1990) 225 Cal. App. 3d 961, 962-963.

23 Discovery under statutes other than §§ 1054-1054.7 is well recognized and is actually
24 preserved by § 1054(e). For example, Evidence code §1043 et seq., which codifies *Pitchess* motions,
25 was not impacted by the reciprocal discovery scheme enactment. Albritton v. Superior Court, *supra*,
26 225 Cal. App. 3d at pp. 962-063; City of San Jose v. Superior Court (1993) 5 Cal. 4th 47, 55.
27 Similarly, in light of the substantial discretion allowed the prosecution in capital crimes, defense
28

1 discovery of the capital charging policies of the district attorney remains available post-Proposition
2 115 upon a threshold showing. Pen. Code §190.3; People v. Ashmus (1991) 1 Cal. 4th 932, 979-980.

3
4 And discovery rights which stem from constitutional guarantees and protections likewise
5 remain in place despite the passage of Proposition 115 where the range of discovery can include
6 discovery of excessive force claims or discovery requests to file motions. For instance, the court in
7 People v. Memro (1975) 15 Cal. 3d 286, 290-291, confronted with a claim of discriminatory
8 (selective) prosecution, concluded that both the federal (U.S. const. amend. XIV) and state (Cal.
9 Const., art. I, §7) constitutional equal protection clauses provide for reasonable discovery to
10 facilitate the bringing of the motion to dismiss for such discriminatory prosecution. *See also*, Pen.
11 Code §1054(e); People v. McPeters (1992) 2 Cal. 4th 1148, 1171; Griffin v. Municipal Court (1977)
12 20 Cal. 3d 300, 307; People v. Municipal Court (Street) (1979) 89 Cal. App. 3d 739, 751.)

14 Because Murgia/Armstrong discovery stem from constitutional guarantees and protections,
15 Defendant's right to compel it is preserved by section 1054(e) and enforceable by section 1054.5(b).
16 Therefore, Mr. Lastra respectfully requests this Court's order compelling the Attorney General's
17 Office to immediately provide to counsel: (1) forms referring cases for prosecution; and (2) other
18 documentation of the decision-making process such as internal memoranda and the correspondence
19 and/or minutes of meetings between the prosecutor's office and law enforcement personnel. Further,
20 these items should be responsive to the requests transmitted by Defendant in his motion to compel
21 on November 30, 2020. Thus, Mr. Lastra Defendant understands Judge Guerrero's orders to relate to
22 the discriminatory or unlawful prosecution of racial minorities, Black people, members of Black
23 political organizations, members of any Black Lives Matter organizations, or people affiliated with
24 the Black Lives Matter movement; as compared to other similarly situated groups, people, members
25 of political organizations, or persons associated with political movements; and to the types of crimes
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1 alleged in the charging documents of case numbers 20M-05512 and 20F-06361; and Mr. Lastra
2 seeks this Court’s order compelling the Attorney General to preserve and produce these materials
3 immediately.
4

5 III.

6 THE SAN LUIS OBISPO COUNTY DISTRICT ATTORNEY’S OFFICE
7 MUST BE FIREWALLED FROM DISCOVERY, AT LEAST AS IT
8 RELATES TO THE MURGIA/ARMSTRONG ORDER, BECAUSE OF
9 THE “APPARENT AND ACTUAL CONFLICT OF INTEREST”
10 WHICH “COMPROMISES THE IMPARTIALITY OF THE ENTIRE
11 OFFICE OF THE SAN LUIS OBISPO DISTRICT ATTORNEY”.

12 While Judge Guerrero’s recusal order may be challenged by the prosecution on appeal, his
13 underlying factual of findings will not be disturbed. The trial court's ruling on the denial of a motion
14 to recuse is reviewed under a deferential abuse of discretion standard. Haraguchi v Superior Court
15 (2008) 43 C4th 706, 709. The trial court's findings of fact are reviewed under the substantial
16 evidence test, its conclusions of law are reviewed de novo, and its application of the law to the facts
17 is reversible only if arbitrary and capricious. *Id.*, at 711. *See also*, Hollywood v Superior Court
18 (2008) 43 C4th 721, 728 (same standard applies in capital case).

19 Judge Guerrero’s findings specifically cite an email from San Luis Obispo County District
20 Attorney Dan Dow’s campaign, written within 48 hours of initiating the prosecution against Black
21 Lives Matter protesters in this case, and referring to protesters he is prosecuting as “anarchist”,
22 “crazy” and “whacky”. Judge Guerrero further found that Dan Dow had an apparent and actual
23 conflict which compromises the impartiality of the entire San Luis Obispo County District
24 Attorney’s Office. Judge Guerrero’s order compelling Murgia/Armstrong discovery concerns
25 evidence which goes to the heart of this compromised impartiality.
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1 In short, it is improper for the San Luis Obispo County District Attorney’s Office to exercise
2 any dominion or control over the ordered discovery because of the apparent and actual conflict of
3 interest found by Judge Guerrero. The particular discovery ordered under Murgia/Armstrong is of a
4 sensitive nature, and is expected by the defense to further reveal the racial and political bias of Mr.
5 Dow and his Office. Therefore, the District Attorney’s Office cannot be trusted to handle the
6 Murgia/Armstrong discovery; the Attorney General must be ordered to preserve and produce it to the
7 defense.
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9 In fact, the District Attorney’s Office already chose to violate Judge Guerrero’s recusal order
10 on January 6, 2021, by transmitting electronic discovery to counsel while the Attorney General was
11 directed to represent the People of the State of California in these matters. This was two days prior to
12 the stay triggered by both the Attorney General and the District Attorney by filing their notices of
13 appeal of the recusal order on January 8, 2021. Moreover, this disclosure was made despite counsel’s
14 explicit insistences on January 4, 2021, that Judge Guerrero’s order be complied with; that Mr.
15 Dowd’s Office not have any further involvement in this case and that his office be “firewalled” from
16 discovery.
17

18 “An appeal taken by the people in no case stays or affects the operation of a judgment in
19 favor of the defendant, until judgment is reversed.” Pen. Code § 1242. Because Judge Guerrero’s
20 order on the Motion to Compel is not stayed by operation of section 1424(a)(1), and because that
21 order is to be “[b]ased on the evidence presented and consistent with the Court’s contemporaneous
22 ruling on the Recusal Motion”, this Court should order the Attorney General to immediately
23 preserve and provide the ordered Murgia/Armstrong discovery. *See*, Case No. 20M-05512 & 20F-
24 06361, Ruling: Motion to Compel, filed December 11, 2020, at p. 4.
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1 IV.

2 DEFENDANT REQUESTS, AND THIS COURT SHOULD ORDER,
3 ANY AND ALL SANCTIONS THIS COURT DEEMS APPROPRIATE
4 TO ENSURE COMPLIANCE WITH ITS ORDERS AND TO PUNISH
5 THE OFFICES OF THE DISTRICT ATTORNEY AND ATTORNEY
6 GENERAL FOR WILFUL VIOLATION OF JUDGE GUERRERO'S
7 ORDERS.

8 Penal Code section 1054.5(b) states:

9 ... a court may make any order necessary to enforce the provisions of this chapter,
10 including, but not limited to, immediate disclosure, contempt proceedings, delaying
11 or prohibiting the testimony of a witness or the presentation of real evidence,
12 continuance of the matter, or any other lawful order. Further, the court may advise the
13 jury of any failure or refusal to disclose and of any untimely disclosure.

14 As outlined above, both the offices of the Attorney General and the District Attorney have
15 willfully violated Judge Guerrero's order compelling discovery. In fact, within hours of Judge
16 Guerrero making his orders, Dan Dow issued a public statement to the media criticizing this Court's
17 orders and denying Judge Guerrero's factual findings. As outlined above, those findings will not be
18 disturbed on appeal, and Judge Guerrero's order compelling Murgia/Armstrong discovery is not
19 challenged and still in effect. In light of the factual findings, the District's Office cannot be trusted to
20 investigate itself in these allegations of prejudice. This Court must make any lawful order necessary
21 to ensure that the previously ordered Murgia/Armstrong discovery is preserved and provided
22 forthwith.

23 In short, this Court must send a message to these prosecutorial agencies, which have
24 manifested an outright disregard for the authority of this Court and its orders. Any lawful sanction or
25 contempt proceeding would be appropriate here, and Defendant respectfully requests such.

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1 **CONCLUSION**

2 For the afore-cited reasons, Defendant respectfully urges this Court to grant this motion and
3 order the Attorney General's Office to immediately comply with Judge Guerrero's December 11
4 order compelling Murgia/Armstrong discovery, and any other lawful order it deems appropriate.
5

6 Dated: February 7, 2021



7 BRIAN A. FORD
8 Attorney for Defendant
9 ROBERT LASTRA
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1 **DECLARATION OF COUNSEL**

2 I, BRIAN A. FORD, declare:

3 I am an attorney licensed to practice in the State of California. I am attorney of record for Mr.
4 Lastra in this matter, I represent him on a pro bono basis. I have spoken with Mr. Lastra regarding the
5 facts and circumstances of the instant case, and I have reviewed all discovery provided to me by the
6 prosecution in this matter thus far. It is my information and belief that the facts and statements set in
7 the accompanying motion and memorandum of points and authorities are true.
8

9 In particular, I assert the following statements of fact to be true:

10 At the time of Judge Guerrero’s rulings on December 11, 2020, Zee Rodriguez appeared for
11 the Office of the Attorney General, which took over prosecution of the case pursuant to Judge
12 Guerro’s order disqualifying the San Luis Obispo County District Attorney’s Office from the case,
13 pursuant to Penal Code section 1424. William Frank, representing the Office of the Attorney General
14 moved for and received continuances on December 15, 2020 and January 5, 2021.
15

16 On January 6, 2020, the San Luis Obispo District Attorney’s Office transmitted electronic
17 discovery to counsel, in violation of Judge Guerrero’s order recusing them from the case. On
18 January 4, 2020, prior to this violation, counsel had emailed Mr. Frank directly and specifically
19 objected to “any violation of Judge Guerrero’s order and any further involvement of Mr. Dowd’s
20 Office in this case,” and specifically requested production of Murgia discovery on Mr. Dowd’s
21 Office. Further, on January 4, 2020, counsel again emailed Mr. Frank and asserted that Dan Dow’s
22 Office must be “firewalled off” from discovery in this case because Dan Dow’s office is conflicted.
23


24 On January 8, 2021, both the Office of the Attorney General and the San Luis Obispo County
25 District Attorney’s Office filed notices of appeal, challenging Judge Guerrero’s order disqualifying
26 the District Attorney’s Office in both Case Number 20M-05512 and 20F-06361. Save for the
27
28

1 operation of Penal Code section 1424(a)(1), no stay has issued in either matter from either the trial
2 court nor the courts of appeals. No party in either action has requested a stay of the proceedings.
3 Neither the Attorney General nor the District Attorney have challenged Judge Guerrero's ruling on
4 Lastra's Motion to compel.
5

6 On February 2, 2021, both Mr. Frank for the Attorney General's Office and Mr. Henretty for
7 the District Attorney's Office contended that this Court retains jurisdiction of the matter for all
8 issues other than the section 1424 recusal order.
9

10 No discovery compelled by Judge Guerrero's order in his Ruling on the Motion to Compel
11 has been provided to the defense to date. Counsel has no reason to believe the Attorney General has
12 taken any affirmative steps to preserve the ordered Murgia/Armstrong discovery, nor in any other
13 way effectuate Judge Guerrero's December 11th order granting the Murgia/Armstrong discovery.
14 The task cannot be left to the District Attorney's Office because the District Attorney's Office is
15 conflicted. Herein, Defendant Lastra seeks to remedy the Attorney General's disregard of the
16 Superior Court's order, seeking an enforceable order compelling the Attorney General to comply
17 with Judge Guerrero's order for Murgia/Armstrong discovery, and any other sanction deemed
18 appropriate by the Court under the circumstances.
19

20 I declare under penalty of perjury that the foregoing is true and correct, except as
21 to matters therein stated on information and belief, and as to those matters, I believe them
22 to be true. Executed on February 7, 2021, at San Francisco, California.
23

24
25 
26 _____
27 BRIAN A. FORD
28 Attorney for Defendant
ROBERT LASTRA

1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am a citizen of the United States. My business address is 3330 Geary Blvd., 3d. Fl. East,
4 San Francisco, California, 94118. I am over the age of eighteen years and am not a party to the
5 above-entitled action.
6

7 On the date set forth below, I caused a true and correct copy of the within:

8 NOTICE OF MOTION AND MOTION TO COMPELL ATTORNEY GENERAL
9 TO PRODUCE MURGIA/ARMSTRONG DISCOVERY ORDERED BY HON.
10 JUDGE GUERRERO ON DECEMBER 11, 2020.

11 To be served on the following parties in the specified manner:

12 Via Electronic Service:

13 William Frank
14 Attorney General of California
15 300 South Spring Street, Suite 1702
16 Los Angeles, CA 90013
William.Frank@doj.ca.gov

Earl E. Conway, III
For Amman Fasil Asfaw
1065 Higuera Street, Suite 202
San Luis Obispo, CA 93401
earl@conawaylawfirm.com

17 Delaney Henretty, Assistant D.A.
18 San Luis Obispo District Attorney's Office
19 1035 Palm Street
San Luis Obispo, CA 93408
dhenretty@co.slo.ca.us

Steven D. Rice
For Joshua Powell
991 Osos Street, #A
San Luis Obispo, CA 93401
srice@slodefend.com


20 Patrick L. Fisher & Curtis L. Briggs
21 For Tianna Arata
22 1322 Morro Street
San Luis Obispo, CA 93401
23 3330 Geary Boulevard, 3rd Floor East
San Francisco, CA 94118
24 fisherlaw78@yahoo.com

Vincent Barrientos
For Sam Grocott
3330 Geary Blvd., 3rd Fl. East
San Francisco, CA 94118
vincent@barrientoslaw.com

25 Dustin M. Tardiff & Matthew F. Janowicz
26 For Marcus Montgomery
27 P.O. Box 1400
San Luis Obispo, CA 93406
28 dustin@tardiffsaldo.com
matt@tardiffsaldo.com

Tyler Smith
For Jerad Hill
3330 Geary Blvd., 3rd Floor East
San Francisco, CA 94118
smithtyler42@gmail.com

1 I declare under penalty of perjury that the foregoing is true and correct, and that this
2 declaration is executed on the 7th day of February, 2021 at San Francisco, California.

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5 
6 BRIAN A. FORD

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1 BRIAN A. FORD, SBN 305023
2 3330 GEARY BLVD., 3D. FL. EAST
3 SAN FRANCISCO, CA 94118
4 TELEPHONE: 415/986-5591
5 FACSIMILE: 415/421-1331

6 ATTORNEY FOR DEFENDANT
7 ROBERT ANTHONY LASTRA, JR.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN LUIS OBISPO

10 PEOPLE OF THE STATE OF CALIFORNIA, Case No. 20F-06361-A

11
12 Plaintiff,

13 v.

14 ROBERT ANTHONY LASTRA, JR.,

15 Defendant.
16 _____/

[PROPOSED] ORDER COMPELING
ATTORNEY GENERAL TO PRODUCE
MURGIA/ARMSTRONG DISCOVERY
ORDERED BY HON. JUDGE GUERRERO
ON DECEMBER 11, 2020.

17
18 IT IS ORDERED:

19 The Attorney General's Office is to immediately comply with Honorable Judge Matthew G.
20 Guerrero's order of December 11, 2020, granting Defendant's request to compel Murgia/Armstrong
21 discovery, which was to specifically include (1) forms referring cases for prosecution; and (2) other
22 documentation of the decision-making process such as internal memoranda and the correspondence
23 and/or minutes of meetings between the prosecutor's office and law enforcement personnel. These
24 orders specifically relate to the discriminatory or unlawful prosecution of racial minorities, Black
25 people, members of Black political organizations, members of any Black Lives Matter organizations,
26 or people affiliated with the Black Lives Matter movement; as compared to other similarly situated
27 groups, people, members of political organizations, or persons associated with political movements;
28

