IMPORTANT: THIS IS A CONFIDENTIAL COMMUNICATION. THE ORIGINAL AND ANY SUBSEQUENT (UNAUTHORIZED) RECIPIENT OF THIS LEGAL CORRESPONDENCE IS INSTRUCTED STRICTLY TO MAINTAIN ITS CONTENTS, SUBJECT MATTER AND EXISTENCE PRIVATELY TO HIM/HERSELF AND HIS/HER LEGAL COUNSEL. NO TRANSMISSION OF ANY KIND OF THE ORIGINAL OR COPY OF THIS LETTER IS AUTHORIZED OR INTENDED. IN PARTICULAR, THESE RECIPIENT RESTRICTIONS APPLY, BUT ARE NOT LIMITED TO, MR. DANIEL DUNBAR OR MRS. CYNTHIA DUNBAR, IN ORDER TO PRECLUDE ANY CLAIM, LEGITIMATE OR OTHERWISE, OF DISTRESS OR HARM THAT EITHER MAY CLAIM RESULTED FROM EITHER PARTY BECOMING AWARE HEREOF. ANY RECIPIENT OF THIS LEGAL CORRESPONDENCE WHO DISREGARDS THESE CLEAR INSTRUCTIONS DOES SO AT HIS/HER OWN LEGAL PERIL.

June 19, 2019

CONFIRMED BY U.S. MAIL

Ms. Elicia Stoller
Deputy District Attorney
Torrance Branch Office
Los Angeles County District Attorney
825 Maple Avenue
Torrance, CA 90503

RE: Potential Civil Action for Malicious Prosecution

Dear Ms. Stoller,[1]

This office serves as litigation counsel for R. Lewis Chapman, Jr. Mr. Chapman currently intends to file a malicious prosecution action stemming from the prosecution and dismissal of baseless, unsubstantiated charges against him. Those illegitimate charges had been brought by a District Attorney who erred as to the credibility of Daniel and Cynthia Dunbar and, relatedly, the fact that a restraining order issued in July 2017 had been issued illegally. The "News" webpage of JeffLewisLaw.com contains an entry dated April 26, 2019 with hyperlinks that allow interested parties to review Mr. Chapman's detailed appellate legal briefs that led to his being vindicated in *Chapman v. Dunbar* (California Court of Appeal Case No. B284239).

[1] This letter is intended to be read **solely** by the addressee and her legal counsel. Neither this office nor Mr. Chapman can be held responsible should you forward it to any third parties.

JEFF LEWIS LAW
609 Deep Valley Drive • Suite 200
Rolling Hills Estates, CA • 90274
Tel. 310.935.4001
JeffLewisLaw.com

Mr. Chapman has not been in a position until recently to engage in various post-dissolution and post-dismissal legal activities relating to the cases. As Mr. Chapman's counsel, I determined it prudent to defer in sending you this formal legal communication until after the dismissal or acquittal of charges, and finality of the civil appellate process. All charges made by Mr. and Mrs. Dunbar against Mr. Chapman were dismissed on May 6, 2019 and the appellate process recently appears to have concluded.

Background

Mr. Dunbar obtained the illegal civil harassment restraining order ("CHRO") only after he and his wife, under penalty of perjury, submitted to the California Superior Court declarations alleging illegal activity by Mr. Chapman that have been accepted as untrue by the courts. Notably, before Mr. Dunbar obtained the illegal order, Mr. Chapman, defending himself and his family against alleged harassment by Mrs. Dunbar, had obtained on June 1, 2017, a restraining order against Mrs. Dunbar. This protective order ("TRO") against Mrs. Dunbar was issued by California Superior Court Commissioner Glenda Veasey the day after Mrs. Dunbar accosted Mr. Chapman on May 31, 2017, while he was gardening on the ground in front of his home.

This allegedly harassing confrontation of Mr. Chapman, initiated by Mrs. Dunbar, followed years of sporadic, unwanted, openly and consistently discouraged confrontations and other interactions initiated by Mrs. Dunbar of Mrs. Jennifer Chapman - a pattern of conduct that Mr. Chapman alleged in his June 1, 2017 restraining order petition constituted illegal harassment by Mrs. Dunbar.[2] Notably, weeks passed after the May 31st incident without any legal action by the Dunbars - no report has been reported as filed with the police department alleging any illegal act by Mr. Chapman nor was any court petition for a restraining order filed. Only after Mrs. Dunbar was served in her home with Mr. Chapman's TRO did Mrs. Dunbar's defense counsel, Mr. Casey Olsen, reportedly contrive the strategy of Mr. Dunbar petitioning for a protective order himself.[3]

Mr. Chapman, however, had not engaged in any illegal harassment. The fact that Mr. Chapman had not illegally harassed either Mr. or Mrs. Dunbar apparently necessitated the fabrication of illegal harassment claims, falsification of Mr. Chapman's actual actions and related specific, legitimate intent/purposes. When deprived of such fabrication and falsification, the allegations presented in the trial court would not survive scrutiny by a group of neutral, unbiased justices within the California Court of Appeal located in downtown Los Angeles (as compared to a Torrance courthouse where Mr. Dunbar has practiced law for decades and where a judge on July 3, 2017, actually had to recuse himself in this case due to a stated friendship with the Dunbars).

---

[2] California Superior Court Judge Gary Tanaka, who the higher court (California Court of Appeal) unanimously decided erred in granting a restraining order to Mr. Dunbar, denied Mr. Chapman's petition to make the TRO restraining Mrs. Dunbar permanent via the grant of CHRO.

[3] Source: PVEPD officer Gretchen Evans PUMA audio recording of Cynthia Dunbar in PVEPD response to false report of CHRO violation on September 5, 2017.

Fortunately, Mr. Chapman successfully presented to both the trial and appellate courts a legally recorded[4] audio file that disproved false declarations made by the Dunbars.[5] Based in large part on that exculpatory evidence,[6] on April 26, 2019, the California Court of Appeal ruled that Mr. Chapman had not illegally harassed Mr. Dunbar and that due process to which Mr. Chapman was legally entitled had not been provided in order to determine whether or not Mr. Chapman had harassed illegally Mrs. Dunbar.

Thus, in summary, through the April 26, 2019 date that the Court of Appeal dissolved the illegal restraining order/injunction, Mr. Chapman had been restrained illegally by the illegal order procured by the Dunbars in July 2017. To be clear, no restraining order ever should have been issued against Mr. Chapman; this had been granted illegally following declarations alleging falsely illegal actions by Mr. Chapman made by the Dunbars to the trial court based in Torrance, California.

Preservation of Evidence

This office is investigating individuals, government entities and the local police department that reasonably appear probable to have played a role in the maliciously prosecuted, improper legal proceedings against Mr. Chapman.

This office has identified you and the District Attorney's office as one of the parties that appears to possess evidence, including electronic documents, bearing on the investigation of Mr. Chapman's potential claims. By this letter, Mr. Chapman requests that you identify and take steps to preserve all evidence bearing on his potential claims for malicious prosecution. Such evidence includes without limitation voicemail messages, audio files, email messages, text messages, social media and other digital "direct messages" (e.g., Facebook) and "private messages" (e.g., Nextdoor.com), letters, affidavits, declarations and other documents referring to the Palos Verdes Estates Police Department, Mr. or Mrs. Chapman or the Dunbars. To be clear, such evidence

---

[4] See Penal Code section 632.

[5] Mr. Chapman, with contemplative foresight, wisely determined to begin legally recording the May 31, 2017 public confrontation initiated by Mrs. Dunbar after concluding previously that she had a history of making misrepresentations that consistently accrued to her benefit though the reputational detriment of others. In addition to the May 31st audio recording, Mr. and Mrs. Chapman have accumulated between 2017 and 2019 an extensive database of video evidence disproving false charges and related assertions made by the Dunbars and related parties (though due to the District Attorney's dismissal of all charges, this database has not been used in a trial as of yet). Mr. and Mrs. Chapman, in order to have available an "independent witness" that disproves false allegations and assertions prospectively made by the Dunbars or potentially conspiring parties, continue the policy of recording periods of potential or actual interactions with those who may determine to make false statements to the police department, district attorney or in a civil action. Any alternative explanation by Mrs. Dunbar or others for such public recording is patently, misleadingly false.

[6] The California Court of Appeal stated, "To the extent Dan Dunbar had such a reaction, it was from his wife's retelling of the incident and *not what actually occurred* [emphasis added]." (Opinion, p. 16.)

includes all Nextdoor.com private messages,[7] Facebook.com direct messages from accounts both in your own name and any aliases, and all other social media website/application messages.

The Illegal CHRO and District Attorney Proceedings

As stated earlier, on July 3, 2017, Dan Dunbar obtained an illegal civil harassment restraining order from the Los Angeles Superior Court against Mr. Chapman. Mr. Dunbar's petition falsely alleged, under penalty of perjury, that Mr. Chapman made a verbal threat of violence that would lead to Mrs. Dunbar being placed or put in a wheelchair (i.e., disable or cripple her). Unbeknownst to the Dunbars when the petition (containing false declarations) for a TRO against Mr. Chapman was filed, Mr. Chapman legally had begun audio recording the May 31, 2017 public incident during which the Dunbars falsely claimed this threat was made.

The legally permissible audio recording, submitted as evidence in both the trial and appellate court, proved that Mr. Chapman had been thoroughly truthful in stating that no threat of violence had been made. Instead, Mr. Chapman legally had criticized Mrs. Dunbar's appearance, stating, "You look so old … go back to your wheelchair." Again, to be perfectly clear, the First Amendment to the U.S. Constitution allows Mr. Chapman the free speech right to make that personal observation to an individual who determined, voluntarily, to walk approximately 100 meters to accost, criticize and allegedly harass Mr. Chapman sitting/gardening in front of his own home, thereafter continuing to make herself the willing recipient of his non-threatening speech until determining to depart. Apparently, the Dunbars understood this First Amendment right, apparently leading to the falsification of Mr. Chapman's "wheelchair" reference, amongst other false allegations or assertions.

Apparently in violation of California's False Claim Act, Mr. Dunbar obtained a waiver of the court filing fee on the basis of Mr. Dunbar's false, under-oath claim that Mr. Chapman had made a threat of violence.[8] The June 16, 2017 petition by Mr. Dunbar included a declaration made under penalty of perjury by Mrs. Dunbar. Mrs. Dunbar also falsely claimed that Mr. Chapman made a threat to place/put her in a wheelchair. However, after listening to Mr. Chapman's audio recording of the May 31, 2017 incident, at the July 3, 2017 CHRO hearing Judge Gary Tanaka found there was no credible threat of violence made against Mrs. Dunbar. Mr. Chapman contends that the Dunbars' statements under oath appear to satisfy the legal definition of "perjury."[9]

---

[7] As part of the discovery process defending against the now-dismissed Dunbar allegations, Mr. Chapman's attorney Mr. J. Patrick Carey successfully compelled the discovery by Nextdoor.com of exculpatory, credibility-impeaching communications written by Mrs. Dunbar.

[8] Mr. Dunbar had his California license to practice law suspended in 1990 following his documented "simulation" of a client's signature on a legal "draft" and "release" agreement; see State Bar of California "attorney license profile" for License No. 100607.

[9] Despite Mrs. Dunbar claiming to have heard a threat by Mr. Chapman to cripple/disable Mrs. Dunbar, there is no evidence that either Mr. or Mrs. Dunbar made a report of such provably false allegation to the police department, and only petitioned for a TRO weeks later after Mrs. Dunbar had been served the TRO issued against Mrs. Dunbar to protect the Chapman family from her.

As the appeal wound its way through the courts, Mrs. Dunbar and others reported to the police provably false allegations of violations of the illegal CHRO by Mr. Chapman. (Per Penal Code section 148.5, it is a crime to make knowingly false reports of committed crimes to a police department or district attorney). The District Attorney was informed clearly and correctly by Mr. Chapman's defense attorney in January 2018 that the CHRO was subject to a timely-filed appeal based on it being granted illegally. Since the first element of any crime is that the CHRO was legally granted, the District Attorney at filing and at all times thereafter must believe beyond a reasonable doubt, per the District Attorney's own standard, that the CHRO was lawfully issued in order to avoid the risk of engaging/conspiring in malicious prosecution.

To be clear, for this reason (in addition to the absence of credible, substantial corroborating evidence supporting any allegation of legal violation), no charges ever should have been brought against Mr. Chapman. However, there is no evidence that the District Attorney engaged in any, much less substantial legal analysis of the legality of the CHRO before filing charges. The District Attorney, despite the fact that substantial reasonable doubt existed that the CHRO was issued legally following false declarations made by the Dunbars, nonetheless determined to initiate and sustain misdemeanor proceedings. While the probability of Mr. Chapman being acquitted or having all charges dismissed was extremely high due to both the clear illegality of the CHRO and the absence of credible, substantial evidence to corroborate the Dunbars' false allegations, Mr. Chapman was forced to hire attorneys to defend himself over a one-and-a-half-year period.

Due to Mr. Chapman's supreme confidence in acquittal or dismissal of all charges,[10] from the outset he refused to agree to settlement offered by the District Attorney. As pre-trial proceedings

[10] The charges filed by the District Attorney were not only lacking substantial, credible corroborating evidence, but were shamefully invalid legally and/or petty in nature. Count 1, Mr. Chapman's contracted associate's mailing of the notices of CHRO appeal, *as required by law* to be delivered to Mr. and Mrs. Dunbar, was so patently invalid that Judge Johansen dismissed it immediately. Counts 2 and 3, *based on the Dunbars' own home surveillance camera footage*, involved a) the driving of an unidentified car – no license plate identified, b) driven by an unidentifiable person – his/her face not identifiable, c) who could not have seen into the Dunbars' kitchen due to documented window glare, and thus could not see if *anyone* was present inside, d) much less make eye contact with anyone, e) much less identify inside a particular individual, f) who has no proof she was even home, or inside the kitchen, or looking out the window, or made eye contact with anyone, g) who in PVEPD-acknowledged blurry images appears to have his/her *index* (i.e., not middle) finger separated and/or h) beginning well before arriving at the Dunbars frontage merely was resting his/her hand on the frame (i.e., not extended outward toward the Dunbar home) of the driver's side window. Notably, on June 22, 2018, PVEPD officer Sean Tomlins, as part of a formal PVEPD incident report responding to one of numerous false, *uncharged* CHRO violation allegations by Mrs. Dunbar, himself refuted Mrs. Dunbar's "middle finger" allegation due to Dunbar home surveillance video footage exhibiting the driver's *index* finger briefly separated – which Tomlins explicitly wrote in his filed report *matched one of the charged incidents*. Count 4 had to its discredit not only witness testimony disputing a false "staring" allegation, but, among other exculpatory evidence, Mr. and Mrs. Dunbar's separate statements to the PVEPD being massively contradictory, destroying all credibility to the allegation while adding credibility to Mr. Chapman and his witness's depiction.

including discovery continued to build a mountain of exculpatory evidence[11] while exposing Mrs. Dunbar's lack of credibility[12] and vengeful motive,[13] Mr. Chapman rejected multiple settlement offers, insisting instead on with-prejudice dismissal of all charges. Otherwise, Mr. Chapman looked forward with the utmost confidence to a trial wherein he could expose his accuser as deceitful, lacking credibility and maliciously motivated, a PVEPD investigation fraught with biased officer misconduct, and myriad exhibits of evidence proving his *innocence* beyond a reasonable doubt.

However, before the matter could proceed to trial, the appeal challenging the illegal CHRO was heard. On April 26, 2019, the California Court of Appeal unanimously agreed with Mr. Chapman, deciding to dissolve the illegal CHRO as invalidly issued. The Court of Appeal agreed that 1) there was no threat of violence by Mr. Chapman, 2) Mr. Chapman had not illegally

---

Lastly, Count 5 invalidly qualified as a CHRO violation Mr. Chapman's reporting to Nextdoor.com and a "Lead" listed on its website (Mr. Brian Cochran) Mrs. Dunbar's violation of the "Community Guidelines" (to which she agreed as part of the site's Membership Agreement) to the Chapman family's reputational detriment. Upon review and investigation, a Nextdoor.com administrator agreed with Mr. Chapman, suspending Mrs. Dunbar's account for the prohibited act of using the site in a dispute between neighbors (Mrs. Dunbar had posted publicly disparaging commentary). Indeed, the CHRO had not granted Mrs. Dunbar carte blanche to engage in behavior that violated local, state or federal law/ordinances or breach a social media website's membership agreement to Mr. or Mrs. Chapman's detriment. Furthermore, Mr. and Mrs. Chapman had accumulated a database of video recordings and other testimony exposing Mrs. Dunbar, who had testified under oath of a dire need of protection from Mr. Chapman via a restraining order, determining voluntarily and unnecessarily to approach and/or deliberately cross paths with Mr. Chapman. To quote Mr. Chapman's defense attorney, "Mrs. Dunbar used the order as a spear instead of a shield."

[11] Mrs. Dunbar's own home video surveillance system proved to be the source substantial exculpatory evidence.

[12] The Palos Verdes Estates Police Department Policy Manual, during the relevant period of 2017-2018, stated, "uniformed officers shall carry and utilize the [PUMA] audio recording equipment supplied by this Department in all [emphasis added] citizen contacts which are reasonable and practical." Such PVEPD Policy also states, "The recorder will act as an independent third-party witness to many police contacts …" As part of the discovery proceedings, the PVEPD turned over to Mr. Chapman's defense counsel numerous PUMA recordings of Mrs. Dunbar making scores of unsubstantiated, baseless allegations against Mr. Chapman. Notably, the District Attorney rejected all post-filing allegations made by Mrs. Dunbar. Furthermore, due to Mrs. Dunbar's proclivity for engaging in detailed, lengthy dialog about Mr. Chapman with openly biased PVEPD officers, these PUMA recordings provided myriad points of evidence impeaching Mr. and Mrs. Dunbar's credibility, exposing Mrs. Dunbar's true motive(s), and evidence supporting a *Trombetta* motion relating to PVEPD misconduct during its investigation of Mrs. Dunbar's provably false allegations.

[13] Mrs. Dunbar's primary motives in maliciously prosecuting Mr. Chapman appear to be retaliation for Mr. Chapman's obtaining a TRO against her, and his informing various neighbors of Mrs. Dunbar's criminal record, which included for a period of time a felony drug conviction.

harassed Mr. Dunbar and 3) the due process to which Mr. Chapman was legally entitled had not been provided in order to determine whether or not Mr. Chapman illegally had harassed Mrs. Dunbar. Upon learning that the Court of Appeal had dissolved the illegal CHRO obtained following false declarations by Mr. and Mrs. Dunbar, the District Attorney determined to dismiss all charges against Mr. Chapman. To be clear, as the first element of any crime is that the CHRO was legally granted, the District Attorney never should have filed charges in the first place. The existence at the time of substantial reasonable doubt that the CHRO was lawfully issued should have been sufficient to defer, at a minimum, the filing of any charge.

Mr. Chapman currently intends to file a malicious prosecution action against those responsible for the improper prosecutorial actions brought against him.

PVE Police Department Misconduct Contributing to the Prosecution

In connection with Mr. Chapman's defense against the charges, his legal team obtained during the discovery phase of the proceedings recordings and written statements made by various people appearing to conspire with the Dunbars. We discovered facts pertaining to the PVE Police Department's involvement in this matter, some of which were included in Mr. Chapman's Trombetta motion filed on October 16, 2018. That filing is attached hereto as Exhibit A.

Accordingly, all of your communications with parties and documents regarding the Dunbars and the Chapmans constitute potential evidence which must be preserved. The District Attorney's office and PVE Police Department's potential motivation to engage in misconduct for Mrs. Dunbar's benefit and to Mr. Chapman's detriment[14] will be relevant evidence in any forthcoming action.

It should be noted that had the Court not dismissed all of the baseless charges against Mr. Chapman and instead the case had gone to trial, Mr. Chapman's defense attorney, J. Patrick Carey, intended to subpoena numerous PVEPD officers to testify. These officers thus would have found themselves in court having sworn an oath of truth, under the penalty of perjury, to testify relating to their misconduct relating to the provably false allegations and incriminations made against Mr. Chapman. Irrespective of the case's eventual dismissal, PVEPD misconduct may have contributed to the District Attorney's decision to initiate and sustain baseless charges against Mr. Chapman, leading to substantial emotional distress and financial losses/expenses on his part.

[14] Mr. Chapman possesses and has documented a deep catalog of evidence of Palos Verdes Estates Police Department misconduct and related bias against him, in no small part related to his leading opposition of the Palos Verdes Estates Law Enforcement Parcel Tax ("Measure E") during the PVEPD's investigation of Mrs. Dunbar's false criminal allegations.

Please do not contact the Chapman family about this letter. I currently intend to contact you prospectively regarding obtaining the evidence in your possession. Should you desire to provide any such evidence voluntarily, please use either my business address listed on this letter or E-mail address (jeff@jefflewislaw.com).

Very truly yours,

Jeffrey Lewis

Encl.

Exhibit “A” - People v. Chapman Trombetta Motion 10-16-2018.pdf

Exhibit A

Exhibit A

LAW OFFICES OF J. PATRICK CAREY
by J. Patrick Carey (SBN 253645)
CERT. CRIM. LAW SPEC. (CBLS)
1500 Rosecrans Avenue, Suite 500
Manhattan Beach, California 90266
Tel: (310) 526-2237
Fax: (310) 356-3671
Email: pat@patcareylaw.com

Attorney for Defendant
ROBERT L. CHAPMAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. ROBERT L. CHAPMAN, Defendant.	Case No. 8TR01472 **NOTICE OF MOTION; MOTION TO DISMISS PURSUANT TO *TROMBETTA-YOUNGBLOOD*; POINTS & AUTHORITIES IN SUPPORT THEREOF** Date: 10/16/18 Time: 8:30 AM Court: Dept. 7

TO THE HONORABLE JUDGE KJEHL JOHANSEN OF THE ABOVE-ENTITLED COURT, DEPUTY DISTRICT ATTORNEY ELICIA STOLLER, AND LOS ANGELES COUNTY DISTRICT ATTORNEY JACKIE LACEY: PLEASE TAKE NOTICE that on October 16, 2018, at 8:30am in the above-entitled court, Defendant Chapman will move for an order dismissing all charges in this case on the ground that the intentional, bad-faith loss or destruction of material evidence by the prosecution team has deprived the defendant of due process of law, contrary to the provisions of the Fourteenth Amendment to the United States Constitution, Article I, §15 of the California Constitution and the principles enunciated in *California v. Trombetta* (1984) 467 U.S. 479 and *Arizona v. Youngblood* (1988) 488 U.S. 51.

The motion will be based on this notice of motion, on the attached memorandum of points and authorities served and filed herewith, on such supplemental memoranda of points and authorities as may hereafter be filed with the court, on all the papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing of the motion.

I. INTRODUCTION

A. RELEVANT BACKGROUND FACTS

The Chapman and Dunbar family homes sit on a cul-de-sac street in the small coastal Los Angeles County suburb of Palos Verdes Estates.[1] The defendant in this case is Robert L. Chapman, Jr. He resides at 612 Paseo del Mar with his wife, Jennifer, and their three young children. The complaining witness in this matter is Cynthia Dunbar ("Cindy"). She lives at 716 Paseo Del Mar with her husband, Daniel Dunbar ("Dan"). The Dunbars reside at the corner of the street. The only way to travel to and from the Chapman home is by passing the Dunbar home.

Prior to July of 2014, the Chapmans and Dunbars were friendly and routinely greeted each other on their shared street. After July 2014, however, Mr. Chapman respectfully requested that Cindy not communicate with them anymore. This was in part based on Mr. Chapman's discovery of Cindy's criminal history.[2]

On July 3, 2014, Cindy sent an e-mail to Mr. Chapman asking why he gave Cindy the "cold shoulder" while he was walking down the street past the Dunbar home. She asked Mr. Chapman, is "everything good?" On July 4, 2014, Mr. Chapman replied that everything was not good. He told Cindy that he was upset that she had engaged in a smear campaign against him in the neighborhood. The e-mail did not contain threats of any kind nor did it mention physical violence. Mr. Chapman also forwarded a copy of the e-mail to his then-friend Dan expressing regret that their friendship may necessarily need to end due to Cindy's actions.

After Bob's email, Cindy walked down the street to the Chapman home and screamed at the

---

[1] Palos Verdes Estates is 4.77 square miles.

[2] On July 30, 2010, Cindy was convicted in Case No. YA078016 for possession of a controlled substance and forgery of a prescription. She was placed on probation and sentenced to 180 days of combined confinement in jail and home detention.

Chapman family through the garage doors. Instead of leaving the property through the front gate only 100 feet away, she encircled the perimeter of the home peering into the Chapman's windows. The incident was sufficiently disturbing that over three years later, Jennifer cried while recounting the incident on the witness stand at the hearing for the underlying civil harassment restraining order (herein after "the Order" or "CHRO") in this case.

While Mr. Chapman had no intended contact with Cindy during the next several months, Cindy nonetheless on several occasions confronted Jennifer Chapman. After a confrontation where Cindy accosted Jennifer on February 3, 2015, Mr. Chapman finally sent an e-mail to Dan Dunbar stating, "I am sending this message to you purely out of self interest in the hope that you can find a way to restrain your wife from interacting with any member of my family." Dan's response was: "Message received. Congrats on baby."

Time passed, but then in May of 2016, Cindy confronted Jennifer once again. This time they were in a supermarket. When Cindy approached her, Jennifer asked her to leave her alone. Cindy indicated to Jennifer that "she could talk to anyone she wanted." Mr. Chapman again e-mailed Dan and <u>again</u> asked him to keep Cindy away from the Chapman family.

It was on May 31, 2017 that Cindy finally decided to go to the Chapman home again and confront Mr. Chapman directly. That morning, Mr. Chapman was quietly gardening in his front yard when Cindy confronted him. In a subsequent sworn declaration, Cindy claimed that Mr. Chapman had "threatened to <u>put her</u> in a wheelchair." It was later established, however, that no such threat was actually made. Fortuitously, in order to document the truth of the dialog, Mr. Chapman began audio recording the confrontation mid-way into its procession and played that audio during the CHRO hearing. In contrast to Cindy's sworn statements, the below are the words <u>actually used</u> between Mr. Chapman and Cindy. The actual words and context make clear that Mr. Chapman was referencing Cindy's <u>old age</u> rather than making any actual or implied threat:

Mr. Chapman: <u>You look so old</u>. I'm sad for you.

Cindy: Everybody. Everybody talks about you.

Mr. Chapman: Who? That's why everybody came over and said "Hi" to me.

Cindy: Nooo.

Mr. Chapman: Oh, yeah sure.

Cindy: They're afraid because you told people that -

Mr. Chapman: Oh yeah. Go back to your wheelchair.

Cindy: Don't ever speak to me again.

Mr. Chapman: You come to me. You -

Cindy: Don't ever speak to me again.

Mr. Chapman: You came down to me, you stupid old lady. You came to me. I'm down here on my property.

Cindy's self-initiated contact with Mr. Chapman was an isolated instance of communication between the two. Cindy conceded at the hearing that the Chapmans had not telephoned or e-mailed Cindy in a three-year period. Nor could Cindy recall any incident where the Chapmans physically approached Cindy to initiate a conversation. The only contact initiated by Mr. Chapman to the Dunbars between July 2014 and June 2017 had been six e-mails by Mr. Chapman, five of which were a request that Cindy have no contact with the Chapman family.

After Cindy's May 31, 2017 confrontation of Mr. Chapman, neither Cindy nor Dan went to the police to report any threat (which they would later falsify). Mr. Chapman, on the other hand, sought and obtained a restraining order against Cindy the very next day after the incident. It was only after Mr. Chapman served Cindy with the restraining order that the Dunbars even considered going after Mr. Chapman. This retaliatory filing by the Dunbars was the first example of them using the restraining order process as a sword to attack Mr. Chapman rather than a shield of protection from him. Now, they seek to do the same with the criminal justice system.

What is of extreme importance to mention as a backdrop to this dispute between the Chapmans and Dunbars is the recent political controversy in the City of Palos Verdes Estates over ballot measures that have threatened the very existence of the local police agency, Palos Verdes Estates Police Department (PVEPD). In March of 2017, "Measure D," was defeated by voters. The measure was a parcel tax which would allow the city to fund PVEPD rather than be forced to replace them with the Los Angeles County Sheriff's Department (LASD). On one side of the controversy, Bob

and Jennifer Chapman were the leading public critics of the parcel tax upon which PVEPD's survival was predicated. The Chapmans vocally and publicly supported lowering taxes and hiring the LASD to replace PVEPD. The Dunbars, on the other side of the controversy, were financial backers of the parcel tax and public advocates for retaining PVEPD. After the Measure D defeat, the campaign for a similar initiative, Measure E, began quickly. PVEPD officers were actively campaigning in the community, asking homeowners to place campaign signs on their lawn and encouraging them to get out and vote in favor of Measure E. Jennifer Chapman, as president of the Bluff Cove Homeowners Association ("BCHA"), would later write the official Measure E opposing statement that was published on the actual Measure E ballot. On its Police Officers Association website and elsewhere, PVEPD publicly targeted the Chapman's BCHA in its leading role opposing Measure E.

In the months leading up to the Measure E election, the Dunbars aggressively began to use their CHRO sword. Cindy openly and furtively waved the existence of the CHRO against Mr. Chapman in an attempt to diminish Mr. Chapman's voice and discredit those, like Mr. Chapman, who supported the LASD replacement of PVEPD. In her own words from a police recording on August 25, 2017, she told PVEPD that she stated that she "just want[s] to be surreptitious and catch the mother----." With the help of PVEPD, Cindy was determined to "assembl[e] a case" against Mr. Chapman.

From 911 call on 9/25/17:

Operator: Okay, then you don't need a detective I'll send an officer out. It will be a restraining order violation.

Cindy: Okay but no no no. No, we have to. We are assembling a case. So, we don't want to, you know, I mean, out to me not to Chapman.

Operator: Correct.

Cindy: Yeah, okay. **Because I'm like we have to be so careful.**

Operator: Ma'am. I will send an officer to speak to

you.

Cindy: **Okay, just to me. Perfect.**

After another one of her calls to report a "violation," when dispatch offered to send out a patrol car, Cindy asked if they could "come later" because she was "off to play tennis."

From 911 call on August 26, 2017 stating that Mr. Chapman had traveled on her side of the street:

Operator: I'll go ahead and send someone out to 716 Paseo Del Mar.

Cindy: **No, no, no we are leaving. Can you send them in a couple of hours? We are going to go play tennis.**

Operator: Just give me a call when you get back home and it's a convenient time for you.

Cindy: Perrrrfect.

Cindy stated they were assembling a case and assemble a case they did. Cindy Dunbar has never had the intention to use the restraining order to protect herself from someone she feared. Instead, when it was convenient for her in her time not playing tennis, she would assemble a case with PVEPD; she would make sure Mr. Chapman wasn't informed; she would be "surreptitious and catch the mother----."

After 7 months of reports that deserved the same attention as a "cat stuck in a tree" report, PVEPD submitted a voluminous binder akin to those submitted after a homicide investigation to the District Attorney's office, documenting the "violations" of the Order. And in what cannot be dismissed as coincidence, despite the original report by Cindy Dunbar taking place in July of 2017, just days after he issuance of the CHRO, PVEPD presented the case for filing to the District Attorney's Office just weeks before the Measure E election, with Mr. Chapman's arraignment occurring just days before the election. The criminal prosecution to enforce the CHRO would be PVEPD's opportunity to repay Cindy for her financial and vocal support of Measure E and to take down their political enemy.

B. FACTS RELEVANT TO *TROMBETTA* MOTION

The complaint in this case currently charges Mr. Chapman with four misdemeanor counts of Penal Code § 166(a)(4) for violating the Order.[3]

As the discovery process in this criminal case has progressed over the past several months, the bias against Mr. Chapman by PVEPD has become abundantly clear. PVEPD officers can routinely be heard on tape chastising Mr. Chapman, as well as declaring he is guilty of crimes for which there exists no evidence. For example, in a recent unsolved act of felony vandalism in the neighborhood, Det. Russell Venegas can be heard on tape saying to local residents, "Oh, we know he did it," without any evidence to support that conclusion. In another recording, PVEPD Sergeant Gaunt falsely tells Cindy regarding the District Attorney that "they filed on him. They are going to issue a warrant for his arrest." He goes on to say, "we are taking all of this information in and processing it. We're working with it...I'm excited to get this resolved" and have Mr. Chapman arrested "within the next two weeks." Later, a patrol officer who is no longer with the department is heard telling Cindy Dunbar that it is "awesome" that she obtained an extended restraining order against Mr. Chapman.

Despite their thorough investigation, PVEPD has failed to be thorough in their adherence to their own policies. Specifically, the following is the audio recording policy of PVEPD:

> "All uniformed officers shall carry and utilize the audio recording equipment supplied by this Department in all citizen contacts which are reasonable and practical...During the course of his shift, the officer shall manually activate the recording device on every contact...The recorder will act as an independent third-party witness to many police contacts." The policy goes on to state that when officer do not record, "the omission and the reason for the omission will be documented in the Sergeant's Log."[4]

It is these recordings, or lack thereof, which give rise to the *Trombetta* motion in this case and require the extraordinary remedy of dismissal. In fourteen months post-issuance of the Order, Cindy Dunbar has made fourteen (14) reports of a CHRO violation by Mr. Chapman to PVEPD. Of those

---

[3] The original complaint charged five counts in total, however Count 5 was dismissed pursuant to a demurrer filed by Defendant Chapman.

[4] This policy was received pursuant to a California Public Records Act request.

14 incidents, 5 were actually charged by the District Attorney's Office in this case. Through criminal discovery as well as direct requests to PVEPD via the California Public Records Act, Mr. Chapman has received officer audio files of reports with the exception of the incidents that were formally filed against him by the District Attorney.

1. 9 OF 14 REPORTS BY CINDY DUNBAR CONTAIN MATERIAL AND EXCULPATORY AUDIO RECORDINGS; THESE 9 INCIDENTS WERE NOT CHARGED BY THE DISTRICT ATTORNEY

On July 26, 2017, PVEPD recordings indicate that Cindy reported a violation because Mr. Chapman had contact with her housekeeper when Cindy was not around. Just a few weeks later, on August 25, 2017, Cindy reported that Mr. Chapman committed felony vandalism by putting tar on her driveway. In the officer audio file capturing this baseless accusation, Cindy tells Det. Russell Venegas "you name it, he has done it." She continues by stating, "I just want to catch him. **I want to be surreptitious and catch the mother—."** Later, a neighbor on the recording asks Venegas about the tar, "He [Chapman] did that?" Venegas then responds, without any evidence whatsoever to support it, "I think he did." Cindy Dunbar then says, again without any evidence, "Because that is how he handles his conflicts. What a punk."

Just a week later, on September 5, 2017, Cindy reported that Mr. Chapman had contact with surveillance camera installers at her home. The recording, like the other, contains a gold mine of exculpatory evidence. Cindy told the officer, "I'm old, and sometimes I cannot remember." Most notably in this audio file, Cindy admits that the very emails that were the subject of the granting of the Order against Mr. Chapman were never actually read by Dan Dunbar himself, an item of evidence that should lead to the appellate reversal of the Order at issue in this case.

Then, on September 25, 2017, Cindy reported and frivolously accused Mr. Chapman of yet another felony. This time, she told police that he broke her window without any actual evidence or even suspicion that he did so. When Officer Ackert responded to this "emergency," he recorded almost twenty-seven (27) minutes of material audio. Most notably, Cindy discussed a prior report she made on September 11, 2017 in which she accused Mr. Chapman of exposing his middle finger as he drove by. Cindy states to Ackert, "I've given a report on this so this will be redundant" and that

"I reported that" referring to the September 11th incident. This report, audio, and anything related has been destroyed in bad faith as exhibited by this audio file. Cindy further stated she would provide the surveillance footage of Mr. Chapman committing this crime of vandalism to police officers. That footage has not been provided to the defense, indicating clearly that it was destroyed in bad faith as it exculpated Mr. Chapman. And as if things couldn't get more absurd, Cindy finally tells Officer Ackert captured in the audio that she believes Mr. Chapman is using some sort of electronic device to track her whereabouts, again, without any evidence.

Yet again, in another baseless accusation a few weeks later, on October 8, 2017, Cindy reported that Mr. Chapman flew a drone over her home. This audio file is littered with material that impeaches her credibility and exculpates Mr. Chapman. Further, it displays the patent disdain and bias PVEPD has against Mr. Chapman. Sgt. Eric Gaunt falsely advises Cindy that "charges have been filed" and that there is a warrant for Mr. Chapman's arrest. He goes on to say how "excited" he is about the matter.

A month later, on November 11, 2017, Cindy reported that Mr. Chapman "emailed a neighbor about her." Officer audio was again turned over and revealed a plethora of material and exculpatory evidence including the fact that Cindy does not know what is or what isn't prevented by the Order. She further goes on to fabricate that Mr. Chapman's email actually included a threat to the neighbor. The interviewing officer on the recording clearly signals the PVEPD and Dunbar complicit bias, telling Cindy that "every little bit helps" and that she is "adding the the pile" of evidence they are trying to build against Mr. Chapman, thereby encouraging these false and baseless accusations.

Even after this case was filed, these accusations have not stopped. On June 22, 2018,[5] Cindy again reported a "middle finger violation" such that Mr. Chapman flipped the middle finger as he drove by (just as she did for the 9/11/17 and 9/25/17 charged incidents). Officer Tomlins responded

---

[5] In the original draft of this motion, this paragraph began with "Finally, on 6/22/18". Since even the draft of this motion began, however, Cindy has continued to make false reports against Mr. Chapman. On 7/31/18, Cindy reported that she saw Mr. Chapman at Vons supermarket. Material video surveillance, however, exculpated Mr. Chapman of any wrongdoing. As of the date of the filing of this motion, we can be sure that Cindy has continued to attack Mr. Chapman with her restraining order sword.

to this "emergency" and looked at the Dunbar's own surveillance video. He describes on the recording and later writes in his report that Cindy and her "corroborating witness" are wrong; that in fact Mr. Chapman was merely driving by with perhaps his index finger casually holding the frame of his window as many drivers do. These circumstances are eerily similar to the 9/11/17 and 9/25/17 incidents which are yet charged in this case, yet PVEPD destroyed all audio recordings which would exculpate Mr. Chapman. Cindy tells Officer Tomlins on the 6/22/18 audio, "The District Attorney doesn't want to - wants to be careful that there isn't any kind of like bias because everybody in the world - we all hate him. I don't contact her because and of that will be – his attorney can access it. But - and because he's a lawyer and he finds out stuff." She later states, "Basically, the detective called me and said, 'You know Cindy. Unless you need to, probably don't talk to the DA because every time, everything is - becomes part of the record. And I said okay. Unfortunately, I'd already sent her one thanking her for taking the case." This audio file yet again documents more evidence that was destroyed in this case: the "thank you" email to the District Attorney's Office as well as witness statements from PVEPD advising Cindy to not talk to the police. This collusion between investigating agency and witness is exposed in almost every audio recording. And further exposed is the destruction and failure to turn over material and exculpatory evidence in this case. What officer advised Cindy Dunbar to stop talking to the District Attorney? Where is the email expressing thanks? And most notably, where are the audio files from the 9/11/17 and 9/25/17 reports? This will be discussed further below.

2. THE OTHER 5 INCIDENTS REPORTED *WERE* FILED AS CRIMINAL CHARGES IN THIS CASE; *ALL* AUDIO FILES RELATED TO THESE FIVE CHARGES HAVE BEEN DESTROYED OR NOT PRESERVED

i. <u>Counts 1 and 2</u>

On August 26, 2017, Cindy called 911 to report that Mr. Chapman had "encroached" on her property in violation of the order. Not once during that call does she mention her husband, Dan. Not once does she mention any "staring" incident. Further, she tells the operators, as described above, that she is "off to play tennis" and to come take a report in a few hours. An officer responded to take the report later that morning. In his written report, Officer Tomlins states that Cindy advised him that

Chapman "stayed at the location for 3 to 5 minutes while looking at Daniel Dunbar." Officer Tomlins, however, fails to mention whether or not Dan is even present at the scene. He also fails to mention any interview of Dan.[6] In fact, on October 3, 2017, Detective Russell Venegas interviewed Dan Dunbar. This recording has also been destroyed or not preserved pursuant to PVEPD policy. When Dan is asked if there were any incidents that he could think of in which Mr. Chapman violated the order Daniel replies, "No." Remember, this is 5 weeks after, according to Cindy, Mr. Chapman stared at Dan for "3 to 5 minutes". Then, more than two months later and approximately three months after the event, Dan—for the first time—tells Venegas that he *was* present for the 8/26 starting incident. He, however, claims that Chapman stared at him for "30-45 seconds," in stark contrast to Cindy's report of "3 to 5 minutes" made at the time of the original report to Officer Tomlins.

The audio recording by Officer Tomlins of his interaction with Cindy Dunbar on August 26, 2017 has been destroyed in bad faith. And it could not be more material and likely exculpatory given the timeline and discrepancies described above.

ii. Count 3

Count 3 charges Mr. Chapman with violating the order on 9/11/17 by allegedly exposing his middle finger out his window as he drove by the Dunbar home. This report is identical to the report on 6/22/18 in which material and exculpatory audio *was* provided. The 6/22/18 audio from Officer Tomlins provides the basis for that incident not to be charged. The 911 call and officer recordings of Cindy's 9/11/17 report have been destroyed in bad faith. This fact is proven from Cindy's own statements just two weeks later:

From Cindy's 911 call on 9/25/17, DR 17-14825:

Operator: **Did you report anything on the 11th?**

Cindy: **Yes.**

Operator: **So you did speak to us regarding the incident on the 11th already?**

---

[6] Cindy goes on to state to Officer Tomlins that she received the notice of appeal of the CHRO via mail from Mr. Chapman. This mail was filed as count 1 but was dismissed at arraignment by demurrer.

Cindy: **Yes.**

Where is Cindy's call to PVEPD on 9/11/17? Where is the recording of the officer who interviewed her?

iii. Count 4

In another report identical to the 9/11/17 and 6/22/18 "middle finger" incidents, Cindy again reports that on 9/25/17 Mr. Chapman gave her the finger as he drove his car past her house. This report is just hours after making the aforementioned false report that he "broke her window" that morning. The broken window audio discussed above is littered with exculpatory information and statements and was not filed. Similar to the 9/11 report, the 9/25 "middle finger" phone call report as well as the corresponding officer audio recordings destroyed. This destruction was done in bad faith.

iv. Count 5

Finally, on 2/1/18, Cindy's social media account on Nextdoor.com was suspended after Nextdoor.com determined that she violated their community guidelines. She reported this to PVEPD as a "restraining order violation" without—according to the written statement in the reports—any evidence Mr. Chapman was involved. All audio recordings of her interaction with PVEPD officers has been destroyed in bad faith due to the fact that it would provide the defense with exculpatory impeachment information.

In sum, the following is a statement of the evidence provided in this case as it relates to reports made and charges filed. Does the court notice a theme?

	Report Date	Charged?	Recording Preserved?
1	7/26/2017	No	Yes
2	8/25/2017	No	Yes
3	8/26/2017	Yes	No
4	8/26/2017	Yes	No
5	9/5/2017	No	Yes
6	9/11/2017	Yes	No
7	9/25/2017	No	Yes
8	9/25/2017	Yes	No
9	10/8/2017	No	Yes
10	11/10/2017	No	Yes

11	2/1/2018	No	Yes
12	2/1/2018	Yes	No
13	6/23/2018	No	Yes
14	7/31/2018	No	Yes

II. POINTS, AUTHORITIES, AND ARGUMENT

A. THE PROSECUTION HAD A DUTY IN THIS CASE TO PRESERVE THE DESTROYED/LOST ITEMS OF EVIDENCE

While the law does not impose a duty on the prosecution to collect evidence that might be beneficial to the defense, once collected, the prosecution and their agents have a duty to preserve material evidence and Due Process imposes on the prosecution a duty to preserve material, exculpatory evidence. (*Arizona v Youngblood* (1988) 488 US 51, 58; *California v Trombetta* (1984) 467 US 479, 488; *In re Michael L.* (1985) 39 Cal.3d 81; *People v. Hogan* (1982) 31 Cal.3d 815, 851). Further, the prosecution bears the ultimate responsibility to maintain the integrity of the evidence and to disclose all material evidence. With regard to this duty, the California Supreme Court warned in *In Re Ferguson*,[7]

> "The search for truth is not served but hindered by the concealment of relevant and material evidence. Although our system of administering criminal justice is adversary in nature, a trial is not a game. Its ultimate goal is the ascertainment of truth, and where furtherance of the adversary system comes in conflict with the ultimate goal, the adversary system must give way to reasonable restraints designed to further that goal. Implementation of this policy requires recognition of a duty on the part of the prosecution to disclose evidence to the defense in appropriate cases."

If the prosecution fails to preserve such evidence, as it did here, the defense may make a motion for sanctions, colloquially called a *Trombetta-Youngblood* motion. Because *Trombetta-Youngblood* motions are constitutionally mandated under the Due Process Clause and concern exculpatory evidence, they survive Proposition 115. (See Pen C §1054(e)).

The prosecution team is clearly responsible for the recorded evidence that they gather. This

---

[7] *In re Ferguson* (1971) 5 Cal.3d 525, 531.

responsibility is heightened by PVEPD's own policy regarding audio recording, retention of that audio, and justification of a failure to record via the Sergeant's Log. PVEPD heightened the prosecution team's own responsibility. These policies provide an internal check on the department's officers. If a recording is not made, the policy states that the Sergeant's Log will—not should—document such failure. If there is no documentation of the failure to record, the department's own policy therefore creates a presumption of destruction. This willful violation of Mr. Chapman's due process rights must result in sanctions, no matter who is responsible. In this case, the prosecution must suffer the ultimate sanction – dismissal of the case – since the District Attorney failed to protect the integrity and existence of key evidence in this case.

B. BAD FAITH CAUSED THE DESTROYED/LOST EVIDENCE

A defendant who can establish that the prosecution acted in bad faith in destroying or failing to preserve evidence is entitled to relief on a showing that the lost or destroyed evidence *might* have exonerated him or her. (*Arizona v Youngblood, supra.* See also *Illinois v Fisher* (2004) 540 US 544; *People v Memro* (1995) 11 C4th 786).

In this case, it cannot be honestly argued that bad faith does not exist. The presence or absence of bad faith turns on the government's knowledge of the apparent exculpatory value of the evidence at the time it was lost or destroyed. (*Trombetta, supra*, at p. 469; *Youngblood*, 488 U.S. at 56-57.)

PVEPD recorded every contact that it had with the complaining witness in this case. Each of the recordings was followed by a rejection of charges by the District Attorney's Office for the corresponding allegation. Yet, conveniently for all the charges that *were* filed, PVEPD destroyed the audio recordings. This is not the case of a single recording that was inadvertently lost or destroyed. These audio files for the 5 charged acts are the foundation—brick and mortar—of the entire case. What level of incompetence/bad faith does it take to lose multiple audio and video recordings?

Without the tapes, effective cross-examination is rendered impotent. The testifying officers will be operating off of their own memory, bias, and woefully deficient police reports, secure in the knowledge that they cannot effectively be impeached. Now, the actual statements of Mr. and Mrs. Dunbar are lost, the context is lost, Mr. Chapman's ability to effectively contest what was said, how it was said, and the meaning of any such statements; all because PVEPD is unable to locate every

single recording of the charged acts in this case.

Law enforcement is a "competitive enterprise" made up of intelligent men and women. Law enforcement and the prosecution team must know that the absence of the audio—evidence that would only serve to contradict their written accounts—would make their case much easier to prove and, more importantly, leave Mr. Chapman without an effective means of combating their assertions. In that regard, it is clear that they did not safeguard this evidence with the same diligence that they would inculpatory evidence. That dereliction of duty is bad faith. For this failure, dismissal is warranted and just.

C. THE LOST/DETROYED EVIDENCE WAS MATERIAL AND EXCULPATORY.

If a defendant cannot establish bad faith (as is not the case here), he is still entitled to relief on the showing that the lost or destroyed evidence was material and exculpatory. The materiality of evidence in California is determined under the *Trombetta/Youngblood* federal standard. (*People v. Zapien*, (1993) 4 Cal.4th 929, 964; *People v. Johnson* (1989) 47 Cal.3d 1194, 1233). Material evidence is evidence that might be expected to play a significant role in the suspect's defense. It must possess an exculpatory value that was apparent before the evidence was destroyed and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. (*California v. Trombetta, supra*).

It is inconceivable to assert that Mr. Chapman would not use the audio in his defense given the content of the audio that *was* discovered. Hours of recording are at issue. And every audio file of the uncharged incidents effectively provides the ammunition to not charge those offenses. The entirety of Cindy Dunbar and the interviewing officers' statements is critical to the defense's ability to cross-examine at trial. Additionally, the context of the interviews would demonstrate the level of sloppiness of the police work (ironically, also evidenced by their loss of the tapes) which is relevant to the defense and clearly admissible.

In *Kyles v. Whitley* (1995) 514 U.S. 419, 445-449, the U.S. Supreme Court stated that the defense can attack the police on cross and argue in closing about shoddy and biased police investigation work. (See also *United States v. Hanna* (9th Cir. 1995) 55 F.3d 1456, 1460; and *United*

States v. Sager (9th Cir. 2000) 227 F.3d 1138, 1145-1146.) *Kyles* holds that evidence of sloppy, one-track police investigation "revealed a remarkably uncritical attitude on the part of the police." (*Kyles*, supra, at 445.) This is probative in itself, showing that the police "either knew that it was inconsistent with their informant's second and third statements ... or never even bothered to check the informant's story against known fact. Either way, the defense would have had further support for arguing that the police were irresponsible in relying on [the informant] ...." (*Id.* at 450.) "There was a considerable amount of such *Brady* evidence on which the defense could have attacked the investigation as shoddy." (*Id.* at 442, fn. 13.) "When, for example, the probative force of evidence depends on the circumstances in which it was obtained and those circumstances raise a possibility of fraud, indications of conscientious police work will enhance probative force and slovenly work will diminish it." (Id. at 446, fn. 15.) This, in turn, is relevant to also show the lack of "integrity of the investigation." (*Id.* at 447.)

Details of the investigatory process affect credibility and, perhaps more importantly, the weight to be given to evidence produced by the police investigation as well as the District Attorney's theory and argument. With the loss of the audio in this case, properly characterized as *Brady* evidence detailing the investigatory process, Mr. Chapman is unable to effectively challenge law enforcement on these crucial issues. Accordingly, the recordings are clearly material.

As noted *supra*, the police were well aware of the inflammatory nature of Ms. Dunbar's statements as they heard and recording them during the other discovered audio files. It only leaves us to presume the content of the destroyed tapes.

This case began during CHRO proceedings when Mr. Chapman used an audio file to expose perjurious testimony by Ms. Dunbar that he threatened to "put her in a wheelchair." Now, as he sits in the defendant's chair, because of the bad faith an incompetent work by PVEPD, he unable to defend himself with the words she actually used in each and every allegation in this case, because the recordings have been destroyed.

///

///

///

D. THE LOSS OF EXCULPATORY EVIDENCE AT THE HANDS OF LAW ENFORCEMENT WARRANTS DISMISSAL OF THE COMPLAINT

The prosecution is ultimately responsible for the unavailability of the audio files in this case, a violation Mr. Chapman's Due Process rights under Fifth and Six Amendments of the United States Constitution. In our case, the investigating officers interviewed Cindy Dunbar at length, and on multiple occasions. Each interview was recorded. All audio of the interviews is to be preserved pursuant to their very own policies. Now, all such interviews conveniently of the charged incidents have been lost or destroyed. As a result, Mr. Chapman is now at a loss to directly contradict and impeach the police as well as Ms. Dunbar when they testify. This Due Process violation is cured only by dismissal; a judicial act prayed for by Mr. Chapman and commanded by the Constitution.

E. THE LOSS OR DESTRUCTION OF EXCULPATORY EVIDENCE, WHEN OTHER COMPARABLE EVIDENCE IS NOT AVAILABLE, MANDATES THAT THE MATTER HEREIN BE DISMISSED.

In the instant matter, the *Trombetta* standard of constitutional materiality applies, which necessitates a finding of a Due Process violation in this case. Mr. Champan's right to evidence of an exculpatory nature was noted in *Trombetta*, 467 U.S. 479:

> Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the Court has developed "what might loosely be called the area of constitutionally guaranteed access to evidence." [citation omitted]. Taken together, this group of constitutional privileges delivers exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system. (*Id.* at 485.)

Here, Mr. Chapman does not have access to the material evidence because it was lost/destroyed by the police. Mr. Chapman has lost the opportunity to present the exculpatory audio to impeach the police on the basis of their inaccurate reports, sloppy police work, and present to the

jury the truth of the interviews and accusations as opposed to police opinion. There is no other way to present this information. Mr. Chapman was not present for these interviews. In fact, PVEPD made it a point to not inform Mr. Chapman of each and every allegation as they attempted to "assemble a case against him". No opinion, no matter what the source, can replace the accuracy and completeness of the audio. This is precisely the type of evidence which is "of such a nature that defendant would be unable to obtain comparable evidence of other reasonably available means." (*Trombetta, supra*, at 489.)

The court has the discretion to fashion an appropriate remedy. (*People v. Zamora* (1980) 28 Cal.3d 88.) In our case, the dismissal of the complaint is the appropriate remedy.

III. CONCLUSION

"Experience should teach us to be most on guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." (*United States v. Olmstead* (1925) 277 U.S. 438, 479 (Brandeis, J., dissenting).)

For the above stated reasons Mr. Chapman respectfully requests this Honorable Court to grant this motion and dismiss this case.

Dated: October 16, 2018

Respectfully submitted,

LAW OFFICES OF J. PATRICK CAREY

By: _____

J. PATRICK CAREY
Attorney for Defendant Chapman